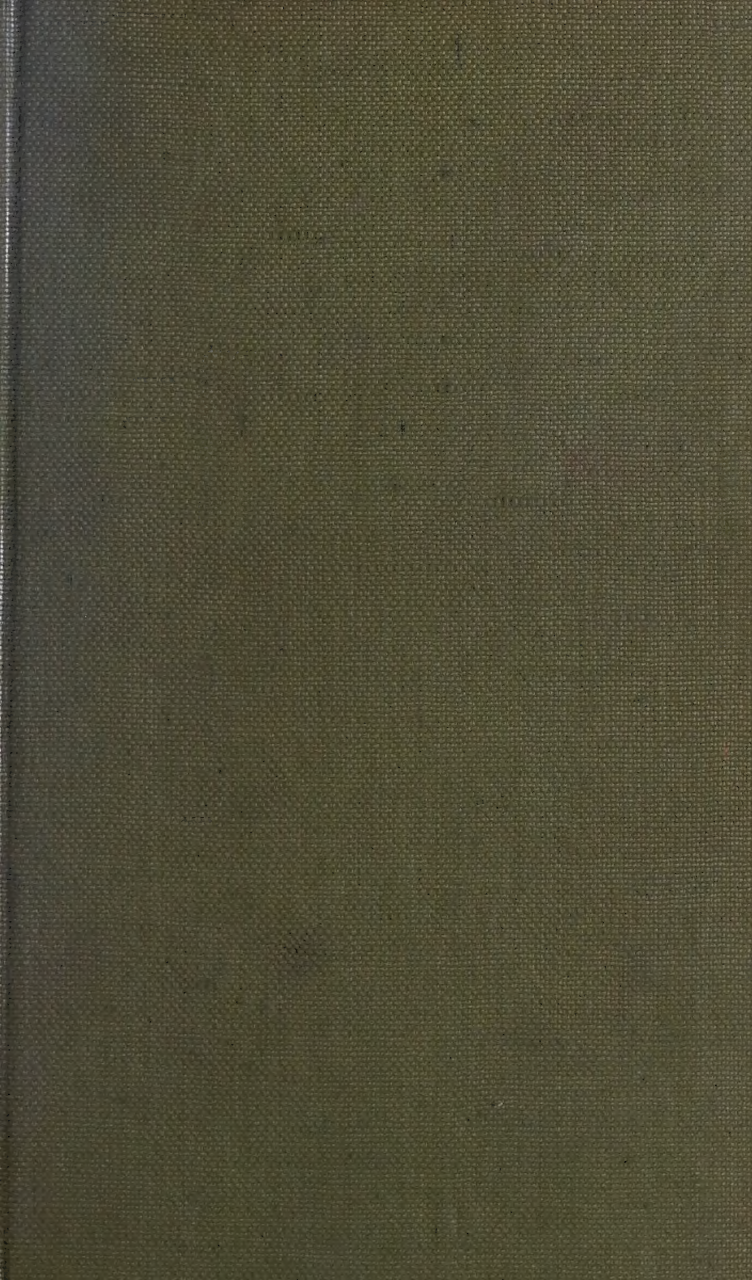








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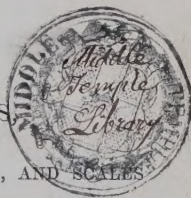
COUNTY COURTS,

EXCLUSIVE OF 'ADMIRALTY AND BANKRUPTCY.

WITH APPENDICES

CONTAINING

ALL THE ACTS, RULES AND FORMS, AND SCALES  
OF FEES AND COSTS.



BY

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## PREFACE.

THE success obtained by the first edition of this work amongst the members of my own profession induced me, in preparing a second edition, to try and make it a complete treatise upon the matters with which it professes to deal. The operation of the Judicature Acts, and the publication of the new rules of practice, have made the task of preparation one of more than ordinary difficulty, as in many cases a new practice, unexplained by judicial decision, is introduced. Nearly the whole of the present edition has been re-written. I cannot hope to have attained anything like perfection, but I have spared no pains in endeavouring to make the volume accurate, complete, and practical. All the decisions of the superior courts upon matters of jurisdiction or practice are incorporated in the text, and a few cases decided by county court judges which appeared to me to be useful are collected in the foot-notes.

The Acts, rules, and forms relating to the Admiralty jurisdiction are included in the Appendices, but the subject is not further dealt with. The bankruptcy jurisdiction, being quite distinct from the ordinary jurisdiction of the county courts, and requiring, moreover, a volume to itself, is not included. With these exceptions, the whole jurisdiction and practice will be found explained in the present volume.

In deference to a generally-expressed opinion, the County Courts' Acts, rules, forms, &c., are printed *in extenso* in the Appendices. The authorised forms have

been supplemented by a few useful forms not elsewhere provided. In order to make the Appendices more useful, and more than a mere reprint of matter contained in the text, references have been added to each section and rule, showing the page of the text on which the particular section or rule is treated of. The scope of the table prefixed to the Appendix containing the County Courts' Acts, and showing the course of legislation in regard to county courts, has been enlarged by many references to amending Acts, and to provisions substituted for repealed sections.

For the convenience of those not having access to extensive law libraries, I have endeavoured to give references to all the current reports in which cases decided under the County Courts' Acts are reported. Pressure at the last moment, caused by the publication of the new rules, has caused some omissions, but generally three or four references are given to all recent cases.

In conclusion, I have to express my thanks to many friends for their encouragement and for much useful advice, and particularly to Mr. S. B. L. DRUCE and Mr. S. HALL, of the equity bar, for their valuable help in the preparation of the parts relating to equity matters.

G. W. HEYWOOD.

*2, St. James's Square, Manchester,*

*21st February, 1876.*

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## ADDENDA AND CORRIGENDA.

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12. *Rees v. Williams*, reported also 32 L. T. N. S. 462; 23 W. R. 550.
33. *Willis v. Thorp*, reported also 44 L. J. Q. B. 137; 23 W. R. 730; 33 L. T. N. S. 11.
53. *Gold v. Turner*, reported also 23 W. R. 732.
61. *Flitters v. Alfrey*, reported also 23 W. R. 442; *Balmain v. Lickfold*, reported also 23 W. R. 310; 32 L. T. N. S. 67.
63. *Strachey v. Lord Osborne*, reported also 23 W. R. 75.
69. *Worthington v. Jeffries*, reported also 32 L. T. N. S. 606; 23 W. R. 750.
70. Note (f), add, "*Kerkin v. Kerkin*, 3 E. & B. 399."  
*Jacobs v. Brett*, reported also 32 L. T. N. S. 522; 23 W. R. 556.
83. Note (g), add, "and see *Sharrock v. London and North Western Railway Company*," *infra*.
89. Line 6, add, "This has been so held in *Sharrock v. London and North Western Railway Company*, L. R. 1 C. P. D. 70."
100. *Ex parte Kibble, re Onslow*, reported also 44 L. J. Bkcy. 3; 32 L. T. N. S. 138; 23 W. R. 423.
103. *Ramsden v. Brearley*, reported also 32 L. T. N. S. 24; 23 W. R. 294.
136. End of fifth paragraph, add, "A fee may properly be charged for making a return to a writ of *certiorari*, and an action at the suit of the registrar will lie to recover it if not paid: *Batt v. Price*, 24 W. R. 318."
137. Line 8, after (i), add, "The order will not be made *ex parte*; a summons to show cause must be taken out. See 'Weekly Notes,' 1876, 12."



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200. End of first paragraph, add, "This appears to have been the opinion of the court of appeal in *Sharrock v. London and North Western Railway Company*, L. R. 1 C. P. D. 70, though the particular point under consideration does not there appear to have been raised."
210. End of first paragraph, add, "The divisional court of appeal sits on Thursdays, Fridays, and Saturdays."
- „ After (d), end of second paragraph, add, "It seems that the leave to appeal should be asked for in the divisional court of appeal at or immediately after the hearing of the appeal."
- „ For the paragraphs under heading "Proceedings in the appeal court" substitute the following: "The following rules have been issued in regard to appeals from inferior courts:—  
 "It is ordered that all cases of appeals from petty or quarter sessions, county courts, or other inferior courts, under the 45th section of the Supreme Court of Judicature Act, 1873, intended to be heard and determined in any one of the second, third, or fourth divisions of the High Court of Justice, be lodged and filed in the Crown Office, Queen's Bench division.  
 "It is further ordered that in each case three paper books be lodged by the appellant with the clerks of the judges selected under rule 16 of the rules of December, 1875, at the judges' chambers, Rolls Gardens, Chancery Lane, four clear days before the day appointed for the hearing."
231. *Richardson v. Wright*, reported also 33 L. T. N. S. 579; 23 W. R. 878.
256. *Osborne v. Hambury*, reported L. R. 1 Ex. D. 48; 45 L. J. Ex. 65; 33 L. T. N. S. 534; 24 W. R. 161. In this case it was held that in order to bring a case within the scope of the section, the payment or set-off relied on to reduce the claim to an amount not exceeding 50*l.* must be made or admitted *before* action. This seems to constitute another point of difference between the section and the 19 & 20 Vict. c. 108, s. 26.
266. Note (bb), add, "S. P., *Pollock v. Campbell*, 24 W. R. 320; 'Weekly Notes,' 1876, 20."
337. *Bellamy v. Hoyle*, reported also 41 L. J. Ex. 169; 33 L. T. N. S. 21; 23 W. R. 754.



THE  
JURISDICTION AND PRACTICE  
OF THE  
COUNTY COURTS.

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INTRODUCTORY CHAPTER.

THE EFFECT OF THE JUDICATURE ACTS AND THE  
NEW RULES.

SINCE the first edition of this work was published, comparatively few alterations in the jurisdiction and practice of the courts have been made by the County Courts' Acts. The Act of 1875 has made some useful alterations, as to the mode of appeal and other matters, which will be found noticed in their proper places in the ensuing pages; and, besides, by numerous Acts, not County Courts' Acts, jurisdiction has been given to the county courts in particular matters—*e.g.*, The Building Societies Act, 1874. But whilst the alterations made by the County Courts' Acts are not numerous, the Judicature Acts have an important bearing upon the practice of the county courts and the law which is to be administered there. Before these Acts, the county courts possessed a limited jurisdiction in all personal (common law) actions, and also in particular matters then cognisable in courts of equity; but the judges, although possessing both jurisdictions, were unable to combine the two in any proceeding, except so far as they were able to do so by means of the limited equitable defences which they had jurisdiction to entertain in common law actions. This anomalous state of things has been altered by the Judicature Acts. In future, the county courts will have power



to grant, and must grant in all proceedings before them, the same relief and combination of remedies, legal and equitable, which might now be obtained in the high court; subject, however, to this proviso—that where any defence or counter claim of a defendant involves matter beyond the jurisdiction of the court, the court will not have power to give any relief upon the counter claim beyond that which the court has jurisdiction to administer. At the same time, in regard to the demand of the plaintiff, it will be the duty of the court to give effect to any defence, legal or equitable, by which the claim may be defeated. A judge of the high court may, however, if he thinks fit, when any defence or counter claim involves matter beyond the jurisdiction of the county court, transfer the whole matter to the high court (*a*).

Besides these important amendments, the Judicature Acts extend to county courts the several rules of law enacted and declared by the Acts upon certain points, so far as the matters to which they relate are respectively cognisable by the county courts (*b*). These rules are contained in section 25 of the Judicature Act of 1873 and section 10 of the Act of 1875, and, so far as it is necessary to refer to them, they will be found referred to in the ensuing pages.

The Judicature Acts also necessarily affect very materially the practice hitherto prevailing in regard to the control over the county courts formerly possessed by the superior courts of law and of equity. Some of these powers—*e.g.*, the power of control by writ of prohibition and *certiorari*—were exercisable by the common law; others—*e.g.*, the power of the superior courts to hear and determine appeals—were exercisable solely by force of statutory provisions; and throughout the whole of the County Courts' Acts various sections will be found in which the superior courts of common law or the High Court of Chancery are mentioned, and in which some controlling power is given to them. The Judicature Acts provide that all Acts of Parliament relating to the several courts and judges, whose jurisdiction is transferred to the High Court of Justice and the court of appeal respectively, or in which any of such courts or judges are mentioned or referred to, shall be construed and

(*a*) 36 & 37 Vict. c. 66, ss. 89, 90. See *post*, chap. iii., part 3, as to the transfer of proceedings to the high court.

(*b*) 36 & 37 Vict. c. 66, s. 91.

This section does not apparently extend sect. 24 to inferior courts. The sections applicable to county courts are collected in Appendix A.

take effect as if the high court or the court of appeal and the judges thereof respectively, as the case may be, had been named in them instead of such courts or judges (*c*). It is conceived that the effect of these provisions, combined with the general transfer of jurisdiction of the superior courts of law and equity to the high court and court of appeal, is to vest in all divisions of the high court, and all the judges thereof, or in the court of appeal, all the powers exercisable by the common law, or by statute, by the superior courts of law or equity, or any of the judges thereof. No doubt, in practice, certain matters formerly within the jurisdiction of the superior courts of common law only will be taken in, or may perhaps be assigned to, the Queen's Bench, Common Pleas, or Exchequer divisions of the high court, and those formerly in the Court of Chancery to the Chancery division; but it would appear that they have now all equal power and authority (*d*). In the ensuing pages, therefore—no rules having yet been issued assigning county court matters to any particular division—the words “high court” will be used instead of the names of the superior courts contained in the County Courts' Acts.

Another point of considerable importance, where any power is by the County Courts' Acts expressed to be exercisable by a judge of a superior court, is, that under the Judicature Acts the powers exercisable in the Queen's Bench, Common Pleas, and Exchequer divisions by a judge at chambers may be exercised by the masters of those divisions (*e*); in certain cases the same powers are exercisable by district registrars (*f*). Amongst other matters, however, excepted from their jurisdiction, may be mentioned the power to issue writs of prohibition and mandamus (*g*). It appears to have been intended to preserve to the district registrars of the counties of Durham and Lancaster the same jurisdiction in regard to all matters formerly within the jurisdiction of their respective palatine courts, which as prothonotaries they formerly possessed (*h*). If the rules as to district registrars are, however, to apply to the registrars in the counties of Durham and Lancaster, their powers will be to some extent curtailed (*g*), although

(*c*) 36 & 37 Vict. c. 66, s. 76.

(*d*) See 36 & 37 Vict. c. 66, s. 34, sub-s. 2, which provides that equity appeals shall not be specially assigned to the Chancery division.

(*e*) Jud. Act, order liv., rule 2.

(*f*) *Ibid.*, order xxxv., rule 4.

(*g*) *Ibid.*, order liv., rule 2; order xxxv., rule 4.

(*h*) 36 & 37 Vict. c. 66, s. 78.

no case affecting their jurisdiction under the County Courts' Acts suggests itself to the author.

The new rules of practice have done away with the two different systems which applied to legal and equitable claims, and prescribe one uniform mode of procedure applicable to all actions alike. This is a most useful alteration; but in consequence of there being different statutory enactments in regard to common law and equity in the county courts, sometimes a confusion is created which it is difficult to correct without new statutory provisions. The most marked case is in regard to appeals, which, under the Equity Act, are permitted under less onerous conditions than at law. Any difficulty in this respect might be obviated by appealing under the new provisions by motion; but an equity appellant would then lose his privilege of appealing within thirty days. To create a new and complete code of procedure without any flaw, it is conceived that the consolidation and amendment of the present county court statutes are desirable and necessary.

As far as possible suggestions have been given in regard to the working of the new system, but at present the working of the combination of legal and equitable remedies presents many difficulties which the rules do not show a remedy for, and the consequences of which cannot be foreseen.

In the chapter upon equity the jurisdiction in those matters is explained, and such provisions of the rules and Acts as appear to apply only to those actions are included. As in other respects the practice is assimilated to that in other actions, reference for it will have to be made to the general practice contained in the earlier chapters.

## CHAPTER I.

### JURISDICTION.



#### PART I. WHEN A COUNTY COURT HAS JURISDICTION.

*Generally as to what claims.* The existing county courts are established under the powers given for their creation by the County Courts Act, 1846, and the jurisdiction which they possess is derived exclusively from that statute, and the numerous other statutes which have from time to time modified or extended the jurisdiction. In all cases where it is sought to ascertain whether or not a county court has jurisdiction to entertain the matter proposed to be brought before it, the test should be applied—Is there any provision in the county courts' or any other statutes enabling the court to exercise jurisdiction? If this question cannot be answered ~~in~~ the affirmative, it may be safely concluded that it is not a case over which the court has jurisdiction.

It must not be forgotten that the Judicature Acts affect the jurisdiction, not in the way of extending the cases in which a plaintiff may apply for relief in a county court, but solely in that of enabling the judge to administer law and equity in the same action, and to give effect to claims and counter claims, whether legal or equitable, so long as they are within his jurisdiction. This jurisdiction is, therefore, quite as much fettered by statute as it was previously to the Judicature Acts; and two questions as to jurisdiction will probably arise in many actions hereafter. 1. Is the claim of the plaintiff within the jurisdiction of the court? 2. Is the defence or counter claim of the defendant within the jurisdiction of the court? And the latter question can only be answered by referring to the statutory power which has been conferred upon the county courts, just as it is necessary in the case

of a claim instituted by a plaintiff. There appears, however, to be this slight distinction between the two cases. If the claim of the plaintiff be one within the jurisdiction of the court, the defendant may defeat it in any manner which would be open to him in the high court, whether the particular ground of defence, if an equitable one, be or be not conferred on the county courts by the Acts extending the equity jurisdiction to them; but if the defendant seeks not merely to defeat the plaintiff's claim, but also to set up a counter claim against the plaintiff, then effect cannot be given to the counter claim unless the court has, by statute, jurisdiction over the subject-matter of it (*i*).

The principal statutes affecting the jurisdiction are divisible into two classes:—

(A) Statutes relating to the general jurisdiction and practice of the county courts—*i.e.*, the various County Courts' Acts, which will be found printed in Appendix C.

(B) Statutes passed since the Act of 1846, giving jurisdiction to the county courts expressly or by implication in particular matters dealt with by such statutes.

The latter may be subdivided into four classes:—

(a) Statutes passed since the Act of 1846, which create an obligation and give a remedy by action, expressly or by implication, within the definition of personal action, *without naming the forum* in which the remedy for breach or non-performance is to be obtained—*e.g.*, The Ballot Act, 1872, which imposes duties on certain persons, for breach or non-performance of which an action will lie (*j*).

(b) Statutes, passed since the Act of 1846, which create an obligation or deal with a previously existing one, and specify the remedy for non-performance, or the means for enforcing performance to be by action or other process *in the county courts as well as in the superior courts*, or give a mere permission to sue or otherwise enforce the obligation in the county courts.

This class may be again subdivided into two classes:—

(b a) Statutes, as aforesaid, which in such case *do not specify any limit* as to the amount and extent of

(i) See remarks as to the effect of the Judicature Acts, *ante*, p. 2.

(j) See *Pickering v. James*,

L. R. 8 C. P. 489; and see *Mills v. Scott*, 29 L. T. N. S. 96, under Contagious Diseases (Animals) Act, 1869.

the county court jurisdiction—*e.g.*, The Merchant Shipping Act, 1854, s. 527; The Married Women's Property Act, 1870; The Copyright of Designs Act, 1858; The Act enabling guardians to recover loans to paupers in the county courts.

- (*b b*) Statutes, as aforesaid, which in such case *do specify a limit* as to the amount and extent of the county court jurisdiction.

This class may be again subdivided into two classes:—

- (*b b a*) Statutes, as aforesaid, which in such case specifying a limit, *do not name the county courts only* as the forum in which the remedy up to such limit is to be obtained—*e.g.*, The Succession Duty Act, 1853; The Public Health Act, 1875; The Customs Consolidation Act, 1853, s. 318.

- (*b b b*) Statutes, as aforesaid, which in such case specifying a limit, *do name the county courts only* as the forum in which the remedy up to such limit is to be obtained—*e.g.*, The Attorneys and Solicitors Act, 1870 (as to business not done in court).

- (*c*) Statutes, passed since the Act of 1846, which create an obligation or deal with a previously existing one, and give a remedy for non-performance or a means of enforcing performance by action or other process, and which *only name the county courts and some other inferior court* as the forum in which the remedy is to be obtained, or proceedings originated—*e.g.*, The Customs Consolidation Act, 1853, s. 263; The Ballot Act, 1872, s. 20, r. 64 (orders for inspection and production of ballot-papers used at municipal elections).

- (*d*) Statutes, as last aforesaid, which in such case *name the county courts only* as the forum in which the remedy is to be obtained or proceedings therefor originated—*e.g.*, The Metropolitan Building Act, 1855; The Alkali Act, 1863; The Literary and Scientific Institutions Act, 1854; The Friendly Societies Act, 1875; The Industrial and Provident Societies Act, 1867; The Cattle Assurance Act, 1866; The Attorneys and Solicitors Act, 1870 (as to work done in county courts); The Bankruptcy Act, 1869 (as to bankruptcies not within the juris-

diction of the London court; The Hosiery Manufacture (Wages) Act, 1874; The Building Societies Act, 1874 (so far as it relates to the alternative jurisdiction given to county courts exclusively).

Before considering the propositions bearing upon the above classification of statutes, which it is sought to establish, the general jurisdiction under the County Courts' Acts may be briefly stated to be as follows:—Subject to the exceptions following, they have jurisdiction to try all personal actions in which the amount claimed does not exceed 50*l.* (*k*). Besides the limit as to amount, in actions in which the title to any corporeal or incorporeal hereditaments shall be in question, and in actions of ejectment, a further limit is imposed as to the yearly rent or value of the hereditaments: it must not exceed 20*l.* (*l*). The courts have no jurisdiction to try actions for breach of promise of marriage, malicious prosecution, libel, slander, or seduction, or actions in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or in which the title to any toll, fair, market, or franchise shall be in question (*m*). These provisions as to personal actions are further subject to the powers enabling parties to give the courts jurisdiction in cases beyond it, to the powers of defendants to object to a trial in a county court, to the powers of removal into the high court by *certiorari*, and to the powers given to the high court to send causes for trial to the county courts. Beyond this they have jurisdiction in particular matters formerly cognisable in the Court of Chancery only; but this jurisdiction, instead of being a general one, as in personal actions, is confined to certain branches of equity, as specified in the Acts conferring the jurisdiction on the county courts.

The effect of the clauses giving jurisdiction in all personal actions seems to be to give the courts a concurrent jurisdiction over all actions within the definition of personal action, which could by law have been brought in

(*k*) 9 & 10 Vict. c. 95, s. 58; 13 & 14 Vict. c. 61, s. 1. This includes *detinue*: *Taylor v. Addyman*, 13 C. B. 309; 22 L. J. C. P. 94, the test as to jurisdiction being whether the value of the goods exceeds 50*l.*; *Leader v. Rhys*, 10 C. B. N. S. 369; 30 L. J. C. P. 345; 9 W. R. 704; 4 L. T. N. S. 330.

(*l*) 9 & 10 Vict. c. 95, s. 58; 30 & 31 Vict. c. 142, ss. 11, 12.

(*m*) 9 & 10 Vict. c. 95, s. 58; 13 & 14 Vict. c. 61, s. 1. See remarks, chap. xiii., part 2, as to jurisdiction in actions in which the title to tolls, &c., is in question.



any courts at the date of the Act of 1846, and not since taken away, so long as the amount claimed is within the limit of jurisdiction, and so long as the claim does not fall within any of the excepted cases. Thus, where a local Act (passed before the 9 & 10 Vict. c. 95) provided that "rates should and might be recovered in any of Her Majesty's Courts of Record at Westminster," it was held that a plaint might be entered in the county court for the recovery of rates under the Act (*n*). The court was of opinion that, as there was nothing in the Act to exclude a local court from jurisdiction, the general terms of the Act of 1846 applying to all personal actions operated to give the county courts jurisdiction. And there seems to be no reason why, if the remedy had been in a local instead of a superior court, the county court should not have been held to have jurisdiction, the jurisdiction of the courts of the Universities, as will presently be noticed, being the sole jurisdiction reserved by the Act so as to exclude the county courts. There can be no doubt, however, that any Act passed since the Act of 1846, providing for the recovery of demands in a superior court exclusively, or in any court exclusively, would operate to exclude the county courts from jurisdiction (*o*). As is said by Lord Tenterden, C.J. : "Where an Act creates an obligation, and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner" (*p*). Conversely, it has been held that when an Act specially provides for the recovery of demands in the county courts, neither the superior nor any other courts have jurisdiction (*q*).

Now, turning to the classification marked (*a*), it is contended that a statute passed since 1846, which gives a remedy by action within the definition of personal action, expressly or by implication, in any matter dealt with by such statute, if it does not name any court or other forum in which it is to be enforced, gives jurisdiction to the county courts, subject to the limit as to amount and the other exceptions. The Legislature must be taken to have

(*n*) *Stewart v. Jones*, 1 E. & B. 22; 22 L. J. Q. B. 1. But the Acts do not revive actions formerly allowed in the old county courts, but which have been taken away from all courts generally : *Ex parte Payne*, 5 D. & L. 679; 18 L. J. Q. B. 197.

(*o*) See *Denton v. Marshall*,

1 H. & C. 654; 32 L. J. Ex. 89.

(*p*) *Doe d. The Bishop of Rochester v. Bridges*, 1 B. & Ad. 847; 9 L. J. K. B. 113.

(*q*) See *Reg. v. Harden*, 2 E. & B. 189; 22 L. J. Q. B. 299; *Hertford Union v. Kimpton*, 11 Ex. 295; 25 L. J. M. C. 41.



intended to give jurisdiction to the existing courts, for if it had been intended to exclude the county courts, it would have been expressly stated, or would have so appeared by implication from the fact of naming some other particular tribunal. The jurisdiction so given is concurrent with that of the high court.

The next class (*ba*), and the questions arising upon it, may be best illustrated by the now repealed Nuisances Removal Act, 1855. A former Act gave jurisdiction to the county courts over claims for certain penalties and costs, but did not give jurisdiction to the superior courts. The jurisdiction of the county courts was held to be exclusive of the superior courts, and it was also held that the restrictions as to questions of title did not, therefore, apply (*r*), just as it has been since held in regard to replevin, although the action may be brought in the county or superior court (*s*). The Act of 1855 provided that the penalties might be recovered in a county or superior court. Did the addition of the superior courts curtail the former county court jurisdiction? The decisions in *Reg. v. Harden* seem to have been influenced by the fact that the superior courts had no jurisdiction; but the words of the statute must be looked to, and where they provide that demands may be sued for "in a county or superior court," without imposing any limit or making any provision as to questions of title or otherwise, it is difficult to see how they can be cut down by a previous statute. It is, therefore, contended with great hesitation that the jurisdiction in all the cases mentioned in class (*ba*) is concurrent with and co-extensive with that of the high court.

In the cases named in class (*bb a*) the jurisdiction up to the prescribed limit is concurrent with that of the high court. In class (*b*) it has been assumed throughout that a statute giving a remedy in the "county or superior court" stands upon the same footing with one which gives a mere permission to sue in a county court without naming the high court. And for this reason, that a mere permission to sue in a county court would not operate to exclude the jurisdiction of the high court. The reasons for believing that the jurisdiction, when not limited as to amount, of both county and high courts is co-extensive, have just been shown; and when the jurisdiction is limited as to amount,

(*r*) *Reg. v. Harden*; *Hertford Union v. Kimpton*, *ubi sup.*

(*s*) *Fordham v. Akers*, 33 L. J.

Q. B. 67; 9 L. T. N. S. 478; 12 W. R. 201.

it is contended, for the same reasons, that the jurisdictions are co-extensive and unfettered by the restrictions as to title up to the prescribed limit (*t*).

In the cases within class (*b b b*) the jurisdiction of the county courts is exclusive of the high court and all other courts up to the amount named; in class (*c*) the jurisdiction is concurrent with some other inferior court, but exclusive of the high court; and in class (*d*) the jurisdiction is absolutely exclusive of all other courts. In some of these cases power is given to the defendant, in a certain manner, to obtain the removal of the cause into the high court, and in others to appeal, but the original jurisdiction is in the county courts. Upon reference to the various statutes named as conferring a jurisdiction exclusive of the high courts in the following pages, it will be found that the words are clear and unambiguous; and it may be safely assumed that, unless they reasonably bear such a construction, the jurisdiction of the high court will not be excluded. Where the jurisdiction of the high court is excluded for the reasons already given, the county courts must have complete jurisdiction for all purposes to any amount. So, where a sub-tenant (*post*, chap. xiii., part 3) omits to give notice to his landlord of a summons served for the recovery of the possession of premises occupied by him, the action for the penalty of three years' rack-rent must be brought in the county court, although the claim may necessarily amount to three times the general statutory limit.

*Universities' and Stannaries' Courts.* The jurisdiction of the courts of the chancellors and vice-chancellors of the universities of Oxford and Cambridge, as holden under the charters of the universities or otherwise, is unaffected by the County Courts' Acts (*u*). Such jurisdiction as they possess over certain claims excludes, therefore, the jurisdiction of the county courts. The courts of the lord warden and of the vice-warden of the stannaries of Cornwall are similarly excepted from the operation of the Act, but with a proviso that the exception shall not be deemed to prevent the establishment of county courts within the stannaries, or to limit or affect their jurisdiction (*v*). Under this enactment it has been held that the jurisdiction of the stannaries court is not exclusive of, but concurrent with,

(*t*) See the judgment of Cockburn, C.J., *Fordham v. Akers*, *ubi sup.*

(*u*) 9 & 10 Vict. c. 95, s. 140.

(*v*) *Ibid.*, s. 141.

that of the county courts (*w*). The Act conferring upon county courts a jurisdiction in equity seems to reserve to the stannaries courts an exclusive jurisdiction in those cases to which their equitable jurisdiction extends (*x*).

*Judgments of other courts.* No action may now be commenced in a county court on a judgment of the high court (*y*): before this enactment it might have been (*z*). It will be seen, however (*post*, chap. viii., part 3), that committals may be obtained in county courts on judgments of the high court.

See, as to the jurisdiction enabling the levying of execution in the county courts upon judgments of the stannaries courts and local courts of record, *post*, chap. viii., part 3.

*General jurisdiction as to persons.* The original County Court Act provides that no privilege, with the exceptions stated below, shall be allowed to any person to exempt him from the jurisdiction of the county courts (*a*). By subsequent clauses the rights and privileges of the chancellors, masters, and scholars of the universities of Oxford and Cambridge, and the jurisdiction of their courts, are specially reserved to them (*b*); and it is enacted that nothing in the Act shall affect the jurisdiction of the stannaries courts in Cornwall, as has already been explained (*ante*, p. 11). The privilege of attorneys to sue in the superior courts was held not to have been taken away by the 9 & 10 Vict. c. 95, s. 67; but this has now been corrected (*c*). It may, therefore, be shortly stated that the chancellors, masters, and scholars of the universities of Oxford and Cambridge enjoy an absolute privilege and immunity from county court proceedings in cases within their privileged jurisdiction, whilst persons within the jurisdiction of the stannaries courts have a privilege to sue in those courts, but no privilege to exempt them from being sued in the county courts (see *ante*, p. 11), but that all other persons are subject to the jurisdiction of the courts.

Justices of the peace have, however, in certain cases, a power to oust the jurisdiction of the county courts, on

(*w*) *Newton v. Nancarrow*, 15 Q. B. 144; 19 L. J. Q. B. 314.

(*x*) 28 & 29 Vict. c. 99, s. 6.

(*y*) 19 & 20 Vict. c. 108, s. 27.

(*z*) *Winsor v. Dunford*, 12 Q. B. 603; 18 L. J. Q. B. 14.

(*a*) 9 & 10 Vict. c. 95, s. 67.

(*b*) *Ibid.*, s. 140.

(*c*) 12 & 13 Vict. c. 101, s. 18.

See *Jefferies v. Beart*, 17 L. J. Q. B. 290; 5 D. & L. 646;

*Borrodaile v. Nelson*, 14 C. B.

655; 23 L. J. C. P. 159; *Jones v.*

*Brown*, 2 Ex. 329; 17 L. J. Ex.

163; *Lewis v. Hance*, 11 Q. B.

921; 17 L. J. Q. B. 172.

giving notice of objection in a specified manner (*d*). And in certain claims under the Customs Consolidation Act, 1853, the Commissioners of Customs may, in a specified manner, remove a case from the county court into the Exchequer division of the high court (*e*); and where a claim exceeds a certain sum, a defendant may generally object to the jurisdiction, and obtain the removal of the cause into the high court (*f*). In these cases the county courts have, therefore, jurisdiction, unless the defendant determines it by objection in the proper manner.

**CONTRACTS.** The statutes giving the county courts jurisdiction do not separate personal actions, and deal with them under the heads of contracts, torts, &c.; but the division originally adopted by the author has, it is believed, been found convenient in practice, and is therefore retained. The jurisdiction in actions for breach of, or arising out of, contract is limited to those cases in which the amount claimed does not exceed 50*l*. Actions for breach of promise of marriage are, however, excepted from the jurisdiction (*g*).

By the combined operation of the two sections last cited, the jurisdiction is extended to those cases where the amount claimed is not more than 50*l*., "whether on balance of account or otherwise." Before the enactment to be presently noticed, the words "balance of account" were explained to mean, "after payment of part, or after the allowance of a set-off as an item in account with the agreement of the parties, which is equivalent to the payment of part, and not when the plaintiff claims more than 50*l*. and seeks to reduce it by giving the defendant credit for a simple set-off" (*h*). So, where a plaintiff's claim exceeded 50*l*., and he offered to reduce it by admitting a set-off, never agreed to by the parties, so as to amount to a part payment, the court was held to have no jurisdiction; and it made no difference in such a case whether the plaintiff gave credit for the set-off in his particulars of demand, or

(*d*) *Post*, chap. iii., part 4.

(*e*) *Post*, p. 32.

(*f*) See *post*, chap. iii., part 4.

(*g*) 9 & 10 Vict. c. 95, s. 58; 13 & 14 Vict. c. 61, s. 1. No action may now be maintained in any court for money due in respect of the sale of ale, porter, beer, cider, or perry consumed on the pre-

mises where sold or supplied, or for money or goods lent or supplied, or for any security given for, in, or towards the obtaining of any such ale, &c.; 30 & 31 Vict. c. 142, s. 4.

(*h*) *Per* Pollock, C.B., in *Avards v. Rhodes*, 8 Ex. 312; 22 L. J. Ex. 106.

offered to assent to it afterwards (i). But, where a set-off was credited in the plaintiff's particulars, it was held that the judge had jurisdiction to inquire whether or not the defendant had consented to the claim being so reduced, and if he found that the defendant had consented, then, if the balance, after the deduction of the set-off, was within the statutory limit, the court had jurisdiction, although the original claim exceeded it (j).

By a subsequent statute it was enacted that: "Where in any action the debt or demand claimed consists of a balance not exceeding 50*l.*, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action" (k). How far this section was intended, or may be construed, to extend the jurisdiction beyond the points at which the above decisions had left it, is not very clear. The use of the word "admitted" seems to imply something more than a mere giving credit by the plaintiff, and seems to require that the defendant should either before (as he might have done before the Act) or *after* action brought and credit given in the plaintiff's particulars, assent to the amount of the set-off, so as to render the amount of it no longer a matter in dispute. If a simple credit by the plaintiff, in his particulars, were sufficient, the judge might be called upon to decide two claims, each of which might exceed the limits of the statutory jurisdiction (l). Yet if the plaintiff sue in the high court, and the defendant plead a set-off reducing the amount recovered to or below 20*l.*, he may, under the 30 & 31 Vict. c. 142, s. 5 (*post*, part iv.), be deprived of his costs, if the judge refuse to certify. Before the Act of 1867, but since the 19 & 20 Vict. c. 108, it was held that a plaintiff was entitled to his costs, although the defendant pleaded a set-off, which the plaintiff after plea admitted, reducing the amount recovered below 20*l.* (m). Referring to the 19 & 20 Vict. c. 108, s. 24, Erle, C.J., in the last case, says: "I interpret this as meaning a set-off which a plaintiff chooses to admit at the time he sues in

(i) See *Avards v. Rhodes*, *ubi sup.*; *Woodhams v. Newman*, 7 C. B. 654; 18 L. J. C. P. 213; *Beswick v. Capper*, 7 C. B. 669; 18 L. J. C. B. 216, *in notis.*

(j) *Kimpton v. Willey*, 9 C. B. 719; 19 L. J. C. P. 268; and see *Beswick v. Capper*, *ubi sup.*

(k) 19 & 20 Vict. c. 108, s. 24.

(l) See *per* Wilde, C.J., in *Woodhams v. Newman*, *ubi sup.*, and Pollock, C.B., in *Avards v. Rhodes*, *ubi sup.*

(m) *Walesby v. Goulston*, L. R. 1 C. P. 567; 35 L. J. C. P. 302; 14 W. R. 899; 14 L. T. N. S. 662.

the county court. No doubt the present plaintiff might have admitted the set-off (the claim was for 51*l.*), and issued a plaint in the county court; but in my opinion he had an option whether he would make the admission or not. I think the clause was introduced into the Act because some persons thought that the right of every suitor to resort to the courts at Westminster Hall was one of the greatest value, and which should not be lightly taken away; but it was said, if the parties choose to admit the set-off, then the plaintiff may sue in the county court. I think there is great doubt whether the set-off can be admitted by one party only" (n). If, as seems to be the case, the assent of the defendant is still necessary to the amount of the set-off, the jurisdiction is hardly extended, except in name, by the 19 & 20 Vict. c. 108, s. 24; and a plaintiff must still sue in the high court if his claim exceeds 50*l.*, and no payment or set-off, assented to by both parties, reduces the amount below the statutory limit. The position of the plaintiff is somewhat hard, as, if the defendant plead and establish a set-off reducing the amount recovered to 20*l.*, he may be deprived of his costs. His proper course would seem to be to obtain the assent of the defendant, before action, to the set-off for which he is willing to give credit, or to apply, after admitting a set-off pleaded by the defendant, and after issue joined, for an order under the 19 & 20 Vict. c. 108, s. 26 (*post*, chap. x.), for trial in a county court.

The jurisdiction under the Bills of Exchange Act, 1855, is specially noticed in chap. xi.

*Actions of contract sent for trial from the high court.* In addition to the jurisdiction already explained, the county courts have jurisdiction over causes which, in certain cases, may be sent to them for trial by judges of the high court. These provisions will be found at length in chap. x.

**TORTS.** The county courts have jurisdiction in all actions of tort when the damage or demand does not exceed 50*l.*, except actions for malicious prosecution, libel, slander, and seduction. No such actions can be commenced in the

(n) L. R. 1 C. P. 569. The term "admitted set-off" is also introduced into the 30 & 31 Vict. c. 142, s. 7. Order vii., rule 1, as to particulars of demand (*post*, chap. iii.), provides that if the

plaintiff "*desires* to admit a set-off," and sues in a county court for the residue, the admission of the set-off shall be entered in particulars.

county courts (*o*), but, as will be presently noticed, the judges of the high court may, in certain cases, send even actions of this description for trial in a county court. The jurisdiction given to the county courts includes actions of detinue (*p*), where the value of the goods detained does not exceed 50*l.* (*q*).

In judging as to whether or not the plaintiff's claim falls within any of the four excepted cases named above, and as to the propriety of bringing an intended action in a county court, the consideration of the following remarks and cases will be useful. If the only action maintainable upon the facts proved is one in which a county court has no jurisdiction, although the plaintiff's particulars do not disclose a cause of action not within the jurisdiction, the court cannot entertain it. So, where a plaint was entered for the recovery of costs of defence, and loss of time incurred in the defence of an unfounded charge before magistrates, this was held to be substantially an action for malicious prosecution (*r*). But where different causes of action arise out of the same facts, it is no objection to the jurisdiction that they support a case of malicious prosecution, if they also support a cause of action within the jurisdiction for which the plaintiff by his particulars professes to be suing. So, where a plaintiff brought an action for false imprisonment, and expressly renounced on his particulars any claim for a malicious prosecution, it was held that the two causes of action were separable, and that the judge was wrong in nonsuiting the plaintiff, on the ground that the evidence disclosed and supported a malicious prosecution, and that he could not separate it from a false imprisonment (*s*). But if the plaintiff's particulars disclose a cause of action not within the jurisdiction, the court cannot entertain it, although the evidence discloses two causes of action, one within and one not within the jurisdiction, or only one cause of action within the jurisdiction; and the judge cannot in either case amend the particulars so as to give himself jurisdiction (*t*). So, where the particulars stated

(*o*) 9 & 10 Vict. c. 95, s. 58;  
13 & 14 Vict. c. 61, s. 1.

(*p*) *Taylor v. Addyman*, 13  
C. B. 309; 22 L. J. C. P. 94.

(*q*) *Leader v. Rhys*, 10 C. B.  
N. S. 369; 30 L. J. C. P. 345;  
9 W. R. 704; 4 L. T. N. S. 330.

(*r*) *Hunt v. North Staffordshire  
Railway Co.*, 2 H. & N. 451; 25  
L. J. Ex. 374.

(*s*) *Austin v. Dowling*, L. R. 5  
C. P. 534; 39 L. J. C. P. 260;  
18 W. R. 1003; 22 L. T. N. S.  
721.

(*t*) *Jones v. Currey*, 2 L. M. &  
P. 474; 20 L. J. Q. B. 438;  
*Hopper v. Warburton*, 32 L. J.  
Q. B. 104; 11 W. R. 384; 7 L. T.  
N. S. 722. See the cases *post*,  
part v., title "Prohibition."



that the defendant assaulted the plaintiff's wife, and maliciously caused her to be charged with stealing, and to be detained in custody, the county court was held to have no jurisdiction, although on the facts it seemed to be conceded that an action for false imprisonment might have been maintained (*u*); and where the particulars disclosed a claim for a malicious prosecution, and the evidence supported a case of false imprisonment, it was held that the judge had no power to give himself jurisdiction by amending the particulars into a claim for false imprisonment (*v*).

*Actions of tort sent by the high courts.* The county courts have also jurisdiction to try causes which in certain cases may be sent to them for trial by judges of the high court. The provisions will be found at length in chap. x.

**JURISDICTION BY CONSENT.** If the plaintiff and defendant in any action which could be brought "in any superior court of common law" agree by a memorandum, signed by them or their respective attorneys (*u*), that any county court named in the memorandum shall have jurisdiction to try the action, the court so named will have power to try it (*e*). It is doubtful what construction will now be placed upon this provision. Prior to the Judicature Acts, it did not operate to extend the power to give jurisdiction by consent to any but common law actions; but now, strictly construing it in connection with the provisions of the Judicature Acts, it would appear to extend to any action whatever (*y*). The proceedings are by plaint and summons, and are in all respects the same as in ordinary cases (*z*). Where consent is given under these provisions, costs are to be allowed, according to the scale or the principle of the scale of costs in the high court (*a*). This is evidently a premium to induce parties to relieve the high court of part of its business.

In any action in the county court, in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, incidentally comes in question, the judge will have power to decide the claim which is the immediate object of the action to enforce, if both parties at the hearing consent in any writing (*b*), signed by them or their solicitors, to the judge having

(*u*) *Jones v. Currey*, *ubi sup.*

(*v*) *Hopper v. Warburton*, *ubi sup.*

(*w*) Form 45.

(*x*) 19 & 20 Vict. c. 108, s. 23.

(*y*) See *ante*, p. 2.

(*z*) Order xxxvii., rule 46.

(*a*) Order xxxvi., rule 9.

(*b*) Form 78.



such power; but the judgment of the court will not be evidence of title between the parties or their privies in any other action in that court, or in any proceeding in any other court; and such consent will not prejudice or affect any right of appeal of either of the parties to such first-mentioned action (*c*). This provision was made before the late Act (*d*), giving the county courts a limited jurisdiction (*e*) in ejectment and in actions in which title is in question; but, in consequence of the limit imposed (*ante*, p. 8) as to the rent or value of the hereditaments to be affected, the above provision as to the consent of parties may often be usefully resorted to (*f*).

A subsequent statute enacts that, "whenever an action or suit is brought in a county court which the court has no jurisdiction to try, the judge shall order the cause to be struck out, and shall, unless the parties consent to the court having jurisdiction to try the same, have power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction in the matter of such plaint, and the plaintiff had not appeared, or had appeared and failed to prove his demand" (*g*). The insertion of the words "unless the parties consent to the court having jurisdiction to try the same" after, instead of before, the words "and shall," makes this section of doubtful benefit in the way of extending the jurisdiction by consent, as it says positively that the cause shall be struck out; and the intention of the section appears to be confined to giving power to the judge to award costs. The consent should, therefore, it would seem, be such consent as may be given by the 19 & 20 Vict. c. 108, ss. 23, 25. It is conceived that the *mode* in which the consent is required to be given by the 19 & 20 Vict. c. 108, ss. 23, 25, is a matter of procedure which may be waived, and that if the parties, without signing a memorandum, declare their consent to try, the court will have jurisdiction (*h*). *Quære*, whether, without a direct statement by the parties, jurisdiction would be given so as to prevent their afterwards obtaining a prohibition (*i*).

(*c*) 19 & 20 Vict. c. 108, s. 25.

(*d*) 30 & 31 Vict. c. 142, ss. 11, 12.

(*e*) See *post*, chap. xiii.

(*f*) See *post*, "Prohibition," as to waiver by the parties of the right to a written consent, by proceeding without it after

knowledge of the defect of jurisdiction.

(*g*) 30 & 31 Vict. c. 142, s. 14.

(*h*) See *Jones v. James*, 1 L. M. & P. 65; 19 L. J. Q. B. 257.

(*i*) See *post*, "Prohibition-waiver."

The parties cannot, however, entirely disregard the usual preliminaries to an action; so, where an action was commenced in a superior court, and the parties agreed between themselves to try in a county court, no plaint being entered or summons issued, or order remitting it for trial being made, the judge held that he had no power to try. He offered, however, to try the case as an arbitrator, and the parties consented. After decision, the plaintiff asked for an appeal case, which was refused by the judge on the ground that no appeal would lie. On an application for a rule to the judge to state a case, the court upheld the ruling of the judge on all points (*j*).

GENERAL PROVISIONS. So far as they can be applicable, the provisions following as to abandonment, splitting demands, and joinder of causes of action, apply to all actions.

*Abandoning excess.* A plaintiff may reduce his demand, so as to bring it within the jurisdiction, by what is termed *abandoning the excess* (*k*). As for example—if his claim amounts to 55*l.*, he may abandon his claim as to 5*l.* and sue for the residue; but if he do so, the judgment in the action will debar him from any further claim to the 5*l.*, and will be in full discharge of the whole debt. If there is any probability of a set-off being established by the defendant, it is not often worth a plaintiff's while to avail himself of this privilege. Formerly, the excess might have been abandoned at any time before or at the hearing, provided it was done by some act in court; but the judge had no power to amend the particulars so as to give himself jurisdiction, unless authorised by the plaintiff (*l*). Now, the rules require that the abandonment must appear on the plaintiff's particulars of demand (*m*). Subsequently to the issuing of a similar rule, it was held that levying a plaint for a sum within the jurisdiction—part of a larger claim, the whole arising out of one cause of action—was not *per se* an abandonment of the excess; and the defendant, not having objected to the splitting of the demand, was held unable to raise it, or the abandonment, as a defence to an action for the residue brought in the superior courts (*n*). It seems that the abandonment may not now be made at the hearing, either by the plaintiff's own declaration or by

(*j*) *Pearce v. Winkworth*, 28 L. T. N. S. 710. *Swift*, 10 Ex. 726; 24 L. J. Ex. 137.

(*k*) 9 & 10 Vict. c. 95, s. 63. (*m*) Order vii., rule 1, chap. iii., part 1.

(*l*) *Isaacs v. Wyld*, 7 Ex. 163; 21 L. J. Ex. 48; *Hill v.* (*n*) *Vines v. Arnold*, 8 C. B. 632; 19 L. J. C. P. 98.

amendment of the particulars at his request by the judge (*o*). But in an action of tort, in which the plaintiff claimed 50*l.*, and in his evidence estimated his losses at 70*l.*, the court held that the judge was right in amending the plaintiff's particulars at his request, so as to show an abandonment of any claim beyond the 50*l.* (*p*).

*Splitting demands.* A plaintiff is not permitted to divide any cause of action for the purpose of bringing two or more suits in the county courts (*q*). Thus, where a shop-keeper, who had supplied goods to workmen of the defendant, on the authority of tickets issued by the defendant's agents, entered 228 plaints against the defendant for a total of upwards of 300*l.*, for goods supplied under the one continuing authority, a prohibition issued to restrain proceedings (*r*). The principle of the decisions is explained by Pollock, C.B., in the last case to be that, where, "in the case of a tradesman's bill, one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another and form one entire demand," the plaintiff cannot split these items into separate causes of action, but must sue for the aggregate amount (*s*).

The words "cause of action" mean, "cause of one action" (*t*), and if the plaintiff have *different* causes of action against the defendant, he may sue for each separately, or jointly, if the total amount claimed do not exceed the limit of the jurisdiction (*u*); so the following may be sued for separately—viz., a claim for money lent, a claim for goods sold and delivered, a claim for work done (*v*), a claim for rent due, a claim for double value for holding over under 4 Geo. 2, c. 28, s. 1 (*w*). In the case last cited, the plaintiff had three demands, one for a horse sold, one for rent due, and one for goods sold and delivered, and they were held

(*o*) *Awards v. Rhodes*, 8 Ex. 352; 22 L. J. Ex. 106; *North v. Holroyd*, L. R. 3 Ex. 69; 37 L. J. Ex. 42; 17 L. T. N. S. 57.

(*p*) *Bodger v. Nicholls*, 28 L. T. N. S. 441.

(*q*) 9 & 10 Vict. c. 95, s. 63.

(*r*) *Grimbley v. Ackroyd*, 1 Ex. 407; 17 L. J. Ex. 157.

(*s*) See also *Bonsey v. Wordsworth*, 18 C. B. 325; 25 L. J. C. P. 205; *Wood v. Perry*, 3 Ex. 442; 18 L. J. Ex. 161.

(*t*) *Per* Pollock, C.B., in *Grimbley v. Ackroyd*, *ubi sup.*

(*u*) Replevin may not be joined with any other cause of action: Order xxii., rule 1.

(*v*) *Kimpton v. Willey*, 9 C. B. 719; 19 L. J. C. P. 269; *Brunskill v. Powell*, 1 L. M. & P. 550; 19 L. J. Ex. 362.

(*w*) *Wickham v. Lee*, 12 Q. B. 521; 18 L. J. Q. B. 21; *Neale v. Ellis*, 1 D. & L. 163; 12 L. J. Q. B. 329.

to constitute three distinct causes of action. The fact of debts being incurred concurrently, and entered in one account by the plaintiff in his books, and rendered to the defendant in one statement of account, does not constitute a bar to, or a waiver of, his right to treat separate causes of action as distinct demands (x).

*Joinder of different causes of action.* Whilst a plaintiff is prevented from splitting his demand so as to bring several actions under the above provisions, he is empowered to join different causes of action in the same action. His power to do so is greatly enlarged by the new rules.

Subject to the rules next mentioned, a plaintiff may unite in the same action several causes of action without leave (y). The exceptions are—claims by a trustee in bankruptcy, as such, may not, without leave of the judge, be joined with any claim by him in any other capacity (z). No cause of action may be joined, except by leave of the judge, with any action for the recovery of land—*e.g.*, ejectment, except claims in respect of mesne profits, or arrears of rent in respect of the premises claimed, or any part thereof, or damages for breach of any contract under which the same or any part thereof are held (a). No other cause of action may be joined with an action of replevin (b).

Claims by plaintiffs jointly may be joined with claims by them, or any of them separately, against the same defendant (c). Claims by or against husband and wife may be joined with claims by or against either of them separately (d). Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided such last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator (e).

If at any time it appears, or is made to appear, to the court that the causes of action united or claims joined in any action cannot be conveniently tried and disposed of together, it may order separate trials, or may exclude any such cause of action or claim, and may order the particulars to be amended accordingly, and may make such order as to costs as may be just (f).

(x) *Kimpton v. Willey*; *Brunskill v. Powell*, *ubi sup.*

(y) Order vi., rule 3.

(z) *Ib.*, rule 2.

(a) *Ib.*, rule 1.

(b) Order xxii., rule 1.

(c) Order vi., rule 6.

(d) *Ib.*, rule 4.

(e) *Ib.*, rule 5.

(f) *Ib.*, rule 7.

Where the plaintiff joins different causes of action or claims, he must state the grounds separately in his particulars, and state separately the payment or satisfaction, relief, redress, or remedy which he claims in respect of each (*g*).

*Jurisdiction over actions sent by high court.* (See *post*, chap. x.)

*Jurisdiction under Bills of Exchange Act, 1855.* (See *post*, chap. xi.)

*Jurisdiction in replevin.* (See *post*, chap. xii.)

*Jurisdiction in ejectment.* (See *post*, chap. xiii., part 1.)

*Jurisdiction in actions in which title is in question.* (See *post*, chap. xiii., part 2.)

*Jurisdiction in actions for recovery of small tenements.* (See *post*, chap. xiii., part 3.)

*Jurisdiction in equity.* (See *post*, chap. xiv.)

*Jurisdiction at law in partnership and intestacy cases.* (See *post*, chap. xv.)

*Acknowledgments by married women.* (See *post*, chap. xvi.)

*Provisions relating to the courts and their officers.* (See *post*, chap. xvii)

*Jurisdiction in admiralty.* This forms the subject of a separate treatise by Mr. Gainsford Bruce. The Acts, notes, and forms only are therefore printed in the Appendices without explanatory text. (See 31 & 32 Vict. c. 71; 32 & 33 Vict. c. 51; 38 & 39 Vict. c. 50; and Order xxxiii., and Forms 243–261.)

*Cases in which the county courts have no jurisdiction.* Any action in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or in which the title to any toll, fair, market, or franchise shall be in question (*h*). This provision is, it is conceived, controlled by the jurisdiction in particular equity and probate matters now possessed by the court, and also by the special provisions conferring jurisdiction in particular matters on the county courts.

(*g*) Order vii., rule 7. See, as to particulars, *post*, chap. iii., part 1.

(*h*) 9 & 10 Vict. c. 95, s. 58;

13 & 14 Vict. c. 61, s. 1. See, as to the latter, the remarks, chap. xiii., part 2.

## PART II. JURISDICTION UNDER ACTS OTHER THAN COUNTY COURTS' ACTS.

Coal Mines Regulation Act, 1872; Explosives Act, 1875; Merchant Shipping Acts, 1854, 1862; Married Women's Property Act, 1870; Copyright of Designs Act, 1858; Loans to Paupers; Land Transfer Act, 1875; Companies Acts, 1862, 1867; Charitable Trusts Acts; Probate and Administration; Succession Duty Act, 1853; Public Health Act, 1875; Pharmaceutical Society; Customs Consolidation Act; Attorneys and Solicitors Act, 1870; Ballot Act, 1872; Metropolitan Building Act, 1855; Alkali Acts, 1863, 1874; Hosiery (Wages) Act, 1871; Enfranchisement of Copyholds; Employers and Workmen Act, 1875; Agricultural Holdings Act, 1875; Building Societies Act, 1874; Winding up of Industrial and Provident Societies; Literary and Scientific Institutions Act, 1854; Friendly Societies Act, 1875; Industrial and Provident Societies Act, 1887.

In this division of the chapter on jurisdiction, the special cases of jurisdiction mentioned in particular Acts will be found noticed. The convenience of the division from the cases under the County Courts' Acts arises from the fact that the provisions of the several County Courts' Acts are construed together as one Act. The cases considered in this division are extended to county courts, by virtue of particular Acts, irrespective of the County Courts' Acts, so far as they relate to jurisdiction; and, as has been already shown, in some of these special cases the county courts possess a fettered or unfettered, concurrent or exclusive jurisdiction, according to the words of the statute conferring the jurisdiction (i).

Where, in any of the cases mentioned in this division, the ordinary practice of the county courts is deviated from, it is specially mentioned; and, subject to such special provisions, the practice in relation to the following heads of jurisdiction is the same as in ordinary cases (j). The author has endeavoured, as far as possible, to arrange them in the following order—*i.e.*, to commence with those cases in which the jurisdiction is concurrent with that of the high court, and conclude with those in which it is exclusive.

*The Coal Mines Regulation Act, 1872.* If at any time representation is made to a Secretary of State, by an inspector or otherwise, that any manager holding a certificate under this Act is, by reason of incompetency or gross negligence, unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of

(i) See *ante*, pp. 9, 10.

(j) Order xl.

State may, if he think fit, cause inquiry to be made into the conduct of such manager; and, with respect to such inquiry, the provisions specified in the section will have effect. The inquiry must be public, and must be held at such place as the Secretary of State may appoint, by such county court judge, or other person named in the Act, as may be directed by the Secretary of State, and either alone or with an assessor or assessors named by the Secretary of State (*k*).

*The Explosives Act, 1875.* By this Act one of the principal Secretaries of State is empowered to appoint a county court judge, or such person as is named in the Act, to make a formal investigation in cases of serious explosions. The inquiry is to be made in open court, and the judge is to have all the powers of a court of summary jurisdiction, as well as certain special powers in regard to the enforcing of the attendance of witnesses, production of documents, and other matters (*l*).

*Merchant Shipping Acts.* By the Merchant Shipping Act Amendment Act, 1862, the provisions in the eighth part of the Act of 1854 for giving summary jurisdiction to two justices in salvage cases are amended, and it is provided that any county court judge may exercise the same jurisdiction in salvage cases as is given to two justices (*m*). The county court judge, as a judge of a court of record, has also a concurrent jurisdiction with other courts to order the detention of foreign ships which have caused injury to British ships, subjects, or other property, under the Merchant Shipping Act, 1854 (*n*).

*Married Women's Property Act, 1870.* In any question between husband and wife, as to property declared by the Act to be the separate property of the wife, either party may apply by summons, or motion, in a summary way either to the high court or (irrespective of the value of the property) to the judge of the county court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs as he may think fit; provided that any order made by such judge will be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if

(*k*) 35 & 36 Vict. c. 76, s. 32.  
For further provisions, see the  
Act itself.

(*l*) 38 Vict. c. 17, s. 66.

(*m*) 25 & 26 Vict. c. 63, s. 49.

(*n*) 17 & 18 Vict. c. 104, s. 527.



either party so require, hear the application in his private room (o).

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the high court or by the judge of the county court of the district in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid (p.)

*Copyright of Designs Act, 1858.* The proprietor of the copyright in any design, under the Copyright of Designs Acts, may proceed, in the county court of the district within which the piracy is alleged to have been committed, for the recovery of damages which he may have sustained by reason of such piracy. The plaintiff must deliver with his plaint a statement of particulars, as to the date and title or other description of the registration whereof the copyright is alleged to be pirated, and as to the alleged piracy. If the defendant intends to rely at the trial, as a defence, on any objection to such copyright, or to the title of the proprietor therein, he must give notice in the manner provided by 9 & 10 Vict. c. 95, s. 76 (*post*, chap. iii., part iv.), of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor to such copyright. The judge, at the instance of the defendant or plaintiff respectively, may require any statement or notice so delivered by the plaintiff or defendant respectively to be amended in such manner as he may think fit (q).

The provisions of the 9 & 10 Vict. c. 95, and the 12 & 13

(o) 33 & 34 Vict. c. 93, s. 9.

(q) 21 & 22 Vict. c. 70, s. 8.

(p) *Ibid.*, s. 10. See *ante*, p. 7.



Vict. c. 101, as to proceedings on a plaint, appeal, and prohibition, so far as they are not repugnant to the provisions of the Act, are applicable to such proceedings for piracy of designs (*r*). It will be observed that the above provisions do not limit the jurisdiction to any particular sum (*s*).

*Recovery of loans to paupers by guardians.* All relief granted to any pauper upon loan, and chargeable to the common fund of the union or to any parish therein, may be recovered in the county court of the district wherein the union or the major part thereof shall be comprised, on the plaint of the guardians, who may apply and be heard by any officer appointed by them for such purpose, in the manner prescribed by the statutes (*t*). This statute does not limit the jurisdiction to any stated amount.

*The Land Transfer Act, 1875.* The expression "the court," in this Act, means the high court or the county court, according as the one or the other is prescribed by the rules for carrying the Act into effect. In all cases where the county courts have jurisdiction so given to them, they have, for all the purposes of such jurisdiction, all the powers of the high court. Any jurisdiction possessed by a county court under this Act may be exercised by the judge, whether sitting in open court or in chambers (*u*).

Any person aggrieved by any order of a judge of a county court may, within the prescribed time and manner, appeal to the high court. The court, on hearing the appeal, may give judgment affirming, reversing, or modifying the order appealed from; and may finally decide thereon, and make such order as to costs in the court below and of the appeal as may be agreeable to justice. If the court alter or modify the order, the order so altered or modified shall be of the like effect as if it were the order of the county court. The court of appeal may also, in cases where the court thinks it expedient, instead of making a final order, remit the case, with such directions as the court may think fit, to the court below (*v*).

*Winding-up of joint-stock companies.* The high court may, if it thinks fit, after making an order for winding-up a company under "The Companies Act, 1862," direct all subsequent proceedings to be held in a county court; and

(*r*) 21 & 22 Vict. c. 70, s. 9.

(*s*) See remarks, *ante*, p. 10.

(*t*) 11 & 12 Vict. c. 110, s. 8.

(*u*) 38 & 39 Vict. c. 87, s. 114.

No rules have yet been published.

The Act comes into operation on January 1, 1876.

(*v*) 38 & 39 Vict. c. 87, s. 116.

the county court will then have, for the purpose of winding-up the company, all the powers and jurisdiction of the high court (*w*). The high court may, if it appears that the winding-up would be more conveniently prosecuted in a different county court from that to which it has been sent, transfer it to another county court (*x*). Parties dissatisfied with the determination or direction of the county court judge may appeal (*y*).

The judges of county courts who sit at places more than twenty miles from the General Post Office are also commissioners for taking evidence in any winding-up under the Companies Acts (*z*).

The general orders, rules, and forms of the chancery division of the high court are to be observed in the above proceedings, so far as they are applicable. But where it appears to the court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the rules and orders, the court may name some bank to be used instead of the Bank of England (*a*).

*Charitable trusts.* When any charity, of which the gross annual income for the time being does not exceed 50*l.*, is established, or administered, or applicable wholly or partially to or for objects or purposes within the district of any county court, and the appointment or removal of any trustee, or any other relief, order, or direction whatsoever concerning such charity is considered desirable, and such appointment or removal, or other relief, order, or direction might be made or given by the court of chancery in respect either of its ordinary or its special or statutory jurisdiction, or by the lord chancellor, intrusted with the care and commitment of the custody of lunatics, any person authorised in this behalf by the order or certificate of the board of Charity Commissioners for England and Wales, or the attorney-general, may apply to the county court of the district for such order, direction, or relief as the nature of the case may require. The court must hear the matter in open court, and give such relief, and make such orders and directions, as might be made by the high court or the lord chancellor as aforesaid, in a suit, or upon petition, as the case may require. No county court judge may vary any decree, order, or direction of the high court, or

(*w*) 30 & 31 Vict. c. 131, s. 41.

(*x*) *Ibid.*, s. 42.

(*y*) *Ibid.*, s. 43. No appeal formerly lay to the common law

courts: *Henderson v. Bamber*, 35 L. J. C. P. 65.

(*z*) 25 & 26 Vict. c. 89, s. 126.

(*a*) Order xxxix.

make or give any order or direction inconsistent or conflicting therewith. Where two or more county courts have concurrent jurisdiction, no application may be made to or entertained by more than one at the same time (*b*). The board may direct to which of such courts application must be made (*c*). The board of Commissioners may, however, direct an application to be made, instead of to a county court, to the high court, or as to any charity within the jurisdiction of the court of chancery of the County Palatine of Lancaster, either to the chancellor or vice-chancellor of the County Palatine, or to the high court (*d*).

No order or decision of any county court for the appointment or removal of any trustee, or the approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property, or income thereof will be valid or effectual until approved by the board of Commissioners (*e*); if dissatisfied with the order or decision, the board may remit the case for the consideration of the county court, or submit it to a judge of the high court (*f*).

*Probate and administration.* When the personal property of the deceased is under 200*l.*, and the real property is under 300*l.*, the judge of the county court, having jurisdiction in the place where the deceased had at the time of his death a fixed place of abode, has the contentious jurisdiction and authority of the court of probate, in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention thereto (*g*). This jurisdiction is not, however, exclusive, though the judge of the court of probate may, if the cause be within the county court jurisdiction, send it to the county court (*h*), even though the parties apply to have it tried by the court itself, or at the assizes (*i*). But he will not send it to a county court until he has received evidence on both sides as to the state of the property and the place of abode of the

(*b*) 16 & 17 Vict. c. 137, s. 32;  
23 & 24 Vict. c. 136, s. 11.

(*c*) 16 & 17 Vict. c. 137, s. 34.

(*d*) *Ibid.*, s. 35.

(*e*) *Ibid.*, s. 36.

(*f*) *Ibid.*, s. 37. For further information on the subject of Charitable Trusts the reader is referred to the 16 & 17 Vict. c. 137, and the 18 & 19 Vict.

c. 124. The rules and forms affecting the procedure in county courts will be found in Appendix H.

(*g*) 21 & 22 Vict. c. 95, s. 10. See rules and forms, Appendix G.

(*h*) 20 & 21 Vict. c. 77, s. 59;  
21 & 22 Vict. c. 95, ss. 12, 20.

(*i*) *Dunn v. Dunn*, 1 Swa. & Tr. 521.

deceased (*j*). Where the estate of the deceased consisted of personalty under 20*l.* in value, and realty valued at 370*l.*, but subject to a mortgage for 100*l.*, the court held that the county court had no jurisdiction (*k*); and so where the other required conditions existed, but the real estate exceeded 300*l.* (*l*).

Where the whole estate of an intestate does not exceed in value 100*l.*, his widow and children, if they reside more than three miles from the registry of the court of probate having jurisdiction in the matter, may apply to the registrar of the county court in the district of which the intestate had his fixed place of abode at the time of his death. The registrar must fill up the usual papers required by the court of probate, to lead to a grant of letters of administration, and must swear the applicant and attest the execution of the administration bond according to the practice of the court of probate, and then transmit them by post to the registrar of the court of probate having jurisdiction in the matter, who must make out and seal the letters of administration and transmit them to the registrar of the county court. He must then deliver them to the applicant on payment of the fees required by the Act (*m*).

If the registrar has reason to believe that the estate exceeds in value 100*l.*, he must refuse to proceed in the matter until satisfied of the real value (*n*). For the purposes of the Act the registrars are to have the powers of commissioners of the court of probate; and, in the necessary absence of the registrar, applicants may be sworn, and execute any necessary documents, at the office of the registrar before any commissioner of the court of probate (*o*).

The practice under the provisions in regard to contentious business of the court of probate is governed by the general rules of the court of probate, and may be ascertained on reference to books of practice in the court of probate. After a cause has been remitted to the county court the court of probate ceases to have seisin of it, and has jurisdiction only as an appeal court in the manner directed by the Act (*p*).

*Succession Duty Act*, 1853. Where any person account-

(*j*) *Slater v. Alvey*, L. R. 2 P. & D. 154; 23 L. T. N. S. 324; 18 W. R. 1103.

(*k*) *Davies v. Brecknell*, L. R. 2 P. & D. 177.

(*l*) *Thomas v. Nursey*, 39 L. J. P. & M. 80; 22 L. T. N. S. 727.

(*m*) 36 & 37 Vict. c. 52, s. 1.

(*n*) *Ibid.*, s. 3.

(*o*) *Ibid.*, s. 4.

(*p*) *Zealey v. Verzard*, 14 L. T. N. S. 769.

able under this Act is dissatisfied with the assessment of the commissioners, he may, if the sum in dispute in respect of duty on such assessment does not exceed 50l., upon giving, within twenty-one days after the date of such assessment, notice of appeal in writing, and a statement, within a further period of thirty days, of his grounds of appeal, appeal to a judge of the county court for the district, county, or division in which the appellant is resident, or the property is situated; and the judge has power to adjudicate upon it in the same manner as a judge of the court of exchequer (*q*).

*The Public Health Act, 1875.* Proceedings for the recovery of demands below 50l., which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court, as if such demands were debts within the cognisance of such courts (*r*).

The above Act expressly repeals "The Nuisances Removal Act, 1855," one section of which provided that certain costs and penalties under the Act might be recovered in any county or superior court (*s*). A former Act, repealed by the Act of 1855, provided that such costs and penalties should be recoverable in a county court (*t*), and the jurisdiction was held to exclude that of the superior courts. It was also held that the exception in the 9 & 10 Vict. c. 95, s. 58, excluding the jurisdiction of the county court in cases in which title to land was in question, did not apply, and that the court had a complete and unfettered jurisdiction (*u*). The arguments based upon these Acts and decisions will be found in earlier pages (*v*). The new Public Health Act, as will be seen above, limits the amount recoverable in a county court, whilst under "The Nuisances Removal Act" the jurisdiction was unlimited.

*Recovery of penalties by Pharmaceutical Society.* The penalty of 5l. imposed on persons not duly registered as pharmaceutical chemists for assuming or using the title of "pharmaceutical chemist," or any name, title, or sign im-

(*q*) 16 & 17 Vict. c. 51, s. 50.  
See *ante*, p. 7.

(*r*) 38 & 39 Vict. c. 55, s. 261.  
This section replaces the 24 & 25 Vict. c. 61, s. 24 (The Local Government Act (1858) Amendment Act, 1861), the jurisdiction being extended from demands below 20l. to demands below 50l.

(*s*) 18 & 19 Vict. c. 121,  
s. 19.

(*t*) 11 & 12 Vict. c. 123,  
s. 3.

(*u*) *Reg. v. Harden*, 2 E. & B. 189; 22 L. J. Q. B. 299; *Hertford Union v. Kimpton*, 11 Ex. 295; 15 L. J. M. C. 41.

(*v*) *Ante*, p. 10.

plying that he is so registered, may be recovered by the registrar of the Society by plaint in the county courts (*w*). The action may not be brought after the expiration of six months from the date of the commission of the offence (*x*).

*Customs Consolidation Act, 1853.* Where in the United Kingdom goods have been seized with regard to which the amount of duties or penalties claimed by the Crown does not exceed 100*l.*, the seizure or penalties may not be sued for or enforced in the high court, but must be sued for or enforced by proceedings in the county courts, before justices or otherwise, as in the Act is provided. Power is, however, given to the Commissioners of the Treasury, in case the Commissioners of Customs desire that the case should be tried in a superior court, to make an order for trial in the exchequer division of the high court, and so to give that court jurisdiction (*y*).

Any person complaining of any illegal seizure of any boat, vessel, or goods may, one month after notice of action, in case no such amends have been tendered as in the Act provided, proceed against the officer by whom such seizure shall have been made, by plaint in the county court, so long as his claim does not exceed 50*l.* (*z*). The action must be brought within the district where the cause of action arose. The same appeal is allowed as in other actions. The cause must be heard before the judge himself, no jury being allowed, unless by order of the judge, and with the written consent of both parties (*a*).

*Agreements for remuneration of solicitors.* By "The Attorneys and Solicitors Act, 1870," attorneys and solicitors are enabled to make binding agreements in writing with their clients for remuneration for their services, either by payment of a gross sum or by commission or percentage, or by salary or otherwise; but if the agreement is made in respect of litigious business, the amount is not recoverable until the agreement has been examined and allowed by the taxing-officer of a court having power to enforce the agreement (*b*).

No action or suit may be brought upon any such agree-

(*w*) 15 & 16 Vict. c. 56, s. 12.

See *Apothecaries' Co. v. Burt*, 1

L. M. & P. 405; 5 Ex. 363; 19 L.

J. Ex. 334, under 55 Geo. 3, c. 194.

(*x*) 15 & 16 Vict. c. 56, s. 13.

(*y*) 16 & 17 Vict. c. 107, s. 263.

See *ante*, p. 7.

(*z*) 16 & 17 Vict. c. 107, s. 318.

(*a*) *Ibid.*, s. 319.

(*b*) 33 & 34 Vict. c. 28, s. 4.

See, as to the validity of agreements as to contentious business, 24 W. R. 48.

ment, but every question, respecting its validity or effect, may be examined and determined, and the agreement enforced or set aside without suit or action, on motion or petition of any person, or the representative of any person, or party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds 50*l.*, by the high court, or a judge thereof, and where such amount does not exceed 50*l.*, by the judge of a county court which would have jurisdiction in an action upon the agreement (c).

If it appears to the judge that the agreement is fair and reasonable, it may be enforced by rule or order in such manner and subject to such conditions, if any, as the judge may think fit; but if not fair and reasonable, the agreement may be declared void, and the judge may order it to be given up to be cancelled, and may direct the charges for the work included in the agreement to be taxed in the ordinary way. The judge may make such order as to the costs of such motion or petition as he may think fit (d).

*Ballot Act*, 1872. Applications for orders for the inspection and production of ballot-papers and documents used in a municipal election, for the purposes of a prosecution or petition, must be made to the county court having jurisdiction in the borough, or some part of it, or to the tribunal in which an election is questioned. An appeal lies from the county court to the high court (e).

*Metropolitan Building Act*, 1855. By section 85 of this Act, power is given to appeal to the county court to rescind or modify certain awards under the Act which surveyors, in certain cases, are thereby empowered to make. The

(c) 33 & 34 Vict. c. 28, s. 8. Under this section it has been held that an action may be brought by an attorney on the agreement, for refusal to allow the attorney to do the work and earn the remuneration: *Rees v. Williams*, L. R. 10 Ex. 200; 44 L. J. Ex. 116.

(d) 33 & 34 Vict. c. 28, s. 9. See ss. 10—14 for provisions for

reopening agreements after payment, and for cases where the attorney dies or is changed pending the business.

(e) 35 & 36 Vict. c. 33, s. 20, and rule 64. The provisions of 22 Vict. c. 35, s. 11, enabling persons to sue in the county court for penalties for bribery at municipal elections, are repealed by 35 & 36 Vict. c. 60, s. 29.



county court, subject to a power for the appellant in certain cases to have the question tried in the high court, is the only court having original jurisdiction in these matters (*f*).

By section 87, building owners may be required by adjoining owners, in certain cases, to give security for the payment of such costs and compensation as may be payable by such building owners. In case of difference, the security may be settled by a county court judge (*g*).

Subsequent clauses provide for the method of procedure, and give a power of appeal in certain cases (*h*).

*Alkali Act, 1863.* Penalties under this Act for offences other than offences against a special rule must be recovered by action in the county court having jurisdiction in the district in which the alkali works are situate in respect of which the penalty arises. Either party may appeal to the high court. Generally, subject to the provisions of the section, the provisions of the County Courts' Acts, rules, and orders are to apply to actions for penalties under the Act. In the city of London, and the liberties thereof, the sheriff's court is to be deemed the county court having jurisdiction (*i*).

Penalties under "The Alkali Act, 1874," sect. 5, directing the prevention, by the most practicable means, of the discharge into the atmosphere of noxious gases, other than muriatic acid, must also be recovered in the county court under the conditions and provisions above specified (*j*).

*The Hosiery Manufacture (Wages) Act, 1874.* If any employer (in such trade) shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame-rent and standing or other charges, or shall refuse or neglect to pay the same, or any part thereof, in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer, or any other person suing for the same, in the county court in the district where the offence is committed, with full costs of suit (*k*). A deduction of a fine from a workman's wages, in accordance with the rules of a factory, for absenting himself from work, is not within this section (*l*).

(*f*) 18 & 19 Vict. c. 122, s. 85.

(*g*) *Ibid.*, s. 87.

(*h*) *Ibid.*, ss. 99—102.

(*i*) 26 & 27 Vict. c. 124, s. 14.

See *ante*, pp. 7, 11.

(*j*) 37 & 38 Vict. c. 43, s. 5.

This Act came into operation on the 1st March, 1875.

(*k*) 37 & 38 Vict. c. 48, s. 3.

See *ante*, pp. 8, 11.

(*l*) *Willis v. Thorp*, L. R. 10 Q. B. 383; 41 L. J. Q. B. 137.



If any frame or machine which shall have been entrusted to any artificer or other person by his employer, for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed, without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then, and in every such case, the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day or any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit (*m*).

*Tithes commutation and enfranchisement of copyholds.* In all cases in which any dispute as to the expenses incidental to an enfranchisement, or as to the compensation to be paid to the steward, shall be referred to the commissioners for their certificate, the costs incurred by them in ascertaining the same shall be paid to the commissioners, either by the person making such reference or applying for such certificate, or by the person whose costs are so taxed, as the commissioners, by order under their hands and seal, may direct; and such order shall state the amount of such costs; and the commissioners shall have power, by application to *any* county court, to recover the same from the person liable under such order, together with all costs of such application; and such order shall be conclusive evidence of such debt (*n*).

*The Employers and Workmen Act, 1875.* In any proceeding before a county court in relation to any dispute between an employer and a workman, arising out of, or incidental to, their relation as such (which dispute is hereinafter referred to as a dispute under this Act), the court may, in addition to any jurisdiction which it might have exercised if this Act had not been passed, exercise all or any of the following powers, that is to say:—

(*m*) 37 & 38 Vict. c. 48, s. 4.

(*n*) 31 & 32 Vict. c. 89, s. 3.

- (1) It may adjust and set off, the one against the other, all such claims on the part either of the employer or of the workman, arising out of, or incidental to, the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,
- (2) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
- (3) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security, to the satisfaction of the court, for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant, and one or more surety or sureties, that the defendant will perform his contract, subject, on non-performance, to the payment of a sum to be specified in the undertaking (a). The security may be given by an oral or written acknowledgment, in or under the direction of the court, of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force; and in any case where security is so given, the court, in or under the direction of which it is given, may order payment of any sum which may become due in pursuance of such security. Rules with regard to giving security may be made, altered, and rescinded by the lord chancellor (b).

The first sub-section of section 3 is subject to the provision that, in the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from, or set off against, a claim for

(a) 38 & 39 Vict. c. 90, s. 3,  
form 242.

(b) 38 & 39 Vict. c. 90, s. 8.

wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work (*q*).

The rules of procedure applying to ordinary complaints and summonses, as explained in former and subsequent pages, apply to actions and proceedings subject to this Act; but the powers and provisions of section 3 may be exercised and applied by the court, though the parties may not have given any of the notices required by orders ix. and x. of the rules of practice (*r*). The orders in question apply to notices of defence and counter claim (*s*).

*The Agricultural Holdings Act, 1875* (*t*). By this Act, in certain cases, tenants are enabled to claim compensation in respect of improvements and alterations of their holdings. The compensation is to be settled by agreement or by reference (*u*). If for fourteen days after notice by one party to the other to appoint a referee, or another referee in case of death or incapacity, the other party fails to do so, then, on the application of the party giving notice, the county court of the district within the district whereof the holding, or the larger part thereof, is situate, must within fourteen days appoint a competent and impartial person to be referee (*v*). Where there are two referees, they must appoint an umpire; and, in the event of his dying or failing to act, they must appoint another. If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the county court above named must within fourteen days appoint a competent and impartial person to be umpire (*w*). This general provision is, however, subject to the following—that where there are two referees, if either party, in appointing a referee, requires it, by notice in writing to the other, the umpire must be appointed by the Enclosure Commissioners for England and Wales, and any successor must, on the application of either party, also be appointed by them. In every other case, if either party, on appointing a referee, requires it, by notice in writing to the other, the umpire and any successor must be appointed by the above-named county

(*q*) 38 & 39 Vict. c. 90, s. 11.      ation on the 14th February, 1876.

(*r*) Order xxxvii., rule 50.

(*u*) 38 & 39 Vict. c. 92, s. 21.

(*s*) See *post*, chap. iii.

(*v*) *Ibid.*, s. 22, sub-s. 6.

(*t*) This Act comes into oper-

(*w*) *Ibid.*, ss. 4, 22, sub-s. 9.

court, unless the other party dissents by notice in writing, in which case the umpire and any successor must be appointed, on the application of either party, by the Enclosure Commissioners (x). The powers as to the appointment of a referee or umpire may be exercised by the judge of the county court, whether within or without his district; and, by consent of the parties, the above powers may be exercised by the registrar (y).

Every application for the appointment of a referee or umpire under sections 22 and 23 must be by summons, sealed with the seal of the court, and returnable not less than seven days from the date of it, except by consent. The summons must be taken out by the party applying, and must be addressed to the other party, and must direct the party summoned to attend at the judge's or registrar's chambers (as the case may be) on the return-day, for the purpose of proceeding with the appointment asked for. The summons must be personally served by the applicant's solicitor. The appointment may be made by endorsement on the summons (z).

The award of the umpire must be made ready for delivery within twenty-eight days after notice in writing given to him by either party or referee, of the reference to him, or within such extended time (if any) as the registrar of the county court from time to time appoints, on application of the umpire or of either party, made before the expiration of the time appointed by or extended under the section (a).

The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where he has been required to act, and including other proper expenses, must be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount or otherwise, and to all the circumstances of the case. These costs will be subject to taxation by the registrar, on the application of either party, and his taxation will be subject to review by the county court judge (b).

*Appeal against award.* Where the sum claimed for compensation exceeds 50*l.*, either party may, within seven days after delivery of the award, appeal against it to the judge

(x) 38 & 39 Vict. c. 92, s. 23.

(y) *Ibid.*, s. 24.

(z) Order xxxiv., rule 7; form 12.

(a) 38 & 39 Vict. c. 92,

s. 30.

(b) *Ibid.*, s. 33.

of the county court on any of the following grounds : 1. That the award is invalid. 2. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation. 3. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation ; and the county court judge must hear the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof, by the referee or referees or umpire, with such directions as he may think fit. If no appeal is so brought, the award is final, and the decision of the county court judge on the appeal is also final ; but at the request of either party, the judge must state a case for the opinion of the high court on any question of law ; and the judgment of the high court on the case, and respecting costs and other matter connected therewith, will be final, and the judge of the county court must act upon it (*e*).

The party prosecuting the appeal will be called appellant, and the party supporting the award respondent (*d*). The appellant must, within four days after the delivery of the award, file a copy of it, together with a concise statement in writing of his grounds of appeal, containing the following particulars : 1. If the appeal is on the ground that the award is invalid, a statement of the several objections to the validity of the award on which he relies. 2. If on any of the second grounds mentioned above, a statement showing in respect of what matters compensation is alleged to have been improperly awarded. 3. If on any of the third grounds mentioned above, a statement showing in respect of what matters compensation is alleged to have been improperly withheld. No ground of appeal will be allowed at the trial unless the above provisions have been complied with. The concise statement must also contain the names, in full, and address of the respondent and of the appellant, and of his solicitor, if the proceedings are commenced through a solicitor (*e*). As many copies of the concise statement as there are respondents, and an additional copy for the use of the judge, must be filed with the registrar by the appellant (*f*).

(*c*) 38 & 39 Vict. c. 92, s. 36.

(*d*) Order xxxiv., rule 1.

(*e*) Order xxxiv., rule 2.

(*f*) Order xxxvii., rule 31.

The registrar must, within twenty-four hours after the filing of the concise statement, transmit a copy to every respondent at the address furnished to him, accompanied by a notice (*g*), requiring the respondent to comply with the following provisions (*h*), viz.: The respondent must, within eight days after transmission of the grounds of appeal to him, deliver to the registrar a statement in writing, signed by himself or his solicitor, disclosing the following matters: 1. Whether he disputes the validity in law of all, or any, and which, of the grounds of objection to the award. 2. Whether he disputes the truth in fact of all, or any, and which, of the grounds of appeal. 3. Whether he admits the validity in law and truth in fact of all, or any, and which, of the grounds of appeal. 4. Whether he prays that the case may be remitted to be reheard. 5. His name and address, and that of his solicitor, if the statement be delivered through a solicitor (*i*). It would appear that the respondent ought to deliver to the registrar copies of the above statement for each appellant, and a copy for the use of the judge (*j*).

On receipt of the last statement, the registrar must transmit copies of both statements and of the award to the judge, who must, as soon as conveniently may be, appoint a time and place for the hearing of the appeal, and instruct the registrar to give notice forthwith to the parties (*k*). The appeal must be heard and determined by the judge, and his order upon it may be enforced in the same manner as any other judgment of the court (*l*).

Where the judge is requested to state a case for the opinion of the high court, the practice in force as to appeals by case must be followed as far as possible (*m*).

Where any money agreed, or awarded, or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed, or awarded, or ordered to be paid, it may be recovered, upon order made by the judge of the county court, as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable (*n*)—*i.e.*, it is conceived, as if it were a judgment debt.

Where a landlord or tenant is an infant, without a guardian, or is of unsound mind, not so found by inquisi-

(*g*) Form 240.

(*h*) Order xxxiv., rule 3.

(*i*) *Ibid.*, rule 4.

(*j*) Order xxxvii., rule 31.

(*k*) Order xxxiv., rule 6.

(*l*) *Ibid.*, rule 5, form 241.

(*m*) *Ibid.*, rule 8.

(*n*) 38 & 39 Vict. c. 92, s. 37.

tion, the county court, on the application of any person interested, may appoint a guardian for the purposes of the Act, and may change him if and as occasion requires (*o*). The county court may also appoint a person to act as the next friend of a married woman for the purposes of the Act, and may remove or change the next friend if and as occasion requires. A married woman entitled for her separate use, and not restrained from anticipation, is, for the purposes of the Act in respect of land, the same as if unmarried. Where any other married woman is desirous of doing any act under the Act, her husband's concurrence is requisite; and she must be examined, apart from him, by the county court, or by the judge of the county court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it must be ascertained that she is acting freely and voluntarily (*p*).

The costs of proceedings in the county court under the Act are in the discretion of the court, and a scale of costs may be prescribed by the lord chancellor (*q*).

A landlord, on paying to the tenant the amount of compensation under the Act, may obtain from the county court a charge on the holding in respect thereof. The court has power, on proof of the payment, and on being satisfied of the observance in good faith by the parties of the conditions imposed by the Act, to make an order charging the holding with repayment of the amount paid, or any part thereof, with such interest, and by such instalments, and with such directions for giving effect to the charge as the court thinks fit. But where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest may be made payable after the time when the improvement in respect whereof compensation is paid will, for the purposes of the Act, be taken to be exhausted. The instalments and interest must be charged in favour of the landlord, his executors, administrators, and assigns (*r*). The sum charged by the order of the court will be a charge on the holding for the landlord's interest in it, and for all interests in it subsequent to that of the landlord, but so that the charge shall not extend beyond the landlord's interest where the landlord is himself a tenant of the holding (*s*).

(*o*) 38 & 39 Vict. c. 92, s. 38.

(*p*) *Ibid.*, s. 39.

(*q*) *Ibid.*, s. 40; Appendix I.

(*r*) 38 & 39 Vict. c. 92,  
s. 42.

(*s*) *Ibid.*, s. 44.



It would appear that the proper court in which any of the proceedings above mentioned should be taken, is the court of the district in which the holding or the larger part of it is situate (*t*). The words of the clause make it appear, however, as if for some purposes another county court might have jurisdiction. Subject to the rules of practice specially applicable to these proceedings, the general practice of the county courts is to be followed (*u*).

*The Building Societies Act, 1874.* In case of any neglect or refusal by an officer bound to give security to deliver his accounts, or to pay over moneys, or to deliver up securities and effects, books, papers, and property, the society may sue upon the bond or may apply to the county court of the district in which the chief office or place of meeting for the business of the society is situate, and the court may proceed thereupon in a summary way, and make such order as to the court in its discretion may seem just, and such order will be final and conclusive (*v*).

A society under the Act may be dissolved by winding-up, either voluntarily, under the supervision of the county court above mentioned, or by the court, if the court shall so order, on the petition of any member authorised, by three-fourths of the members present at a general meeting of the society specially called for the purpose, to present the same on behalf of the society, or on the petition of any judgment-creditor for not less than 50*l.*, but not otherwise (*w*).

The county court above mentioned may hear and determine a dispute: 1. If it shall appear to the court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused, or for a period of twenty-one days have neglected, to make any award. 2. Where the rules of the society direct disputes to be referred to the court or to justices (*x*). The determination of the court is final and subject to no appeal, but the court may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery as to documents and otherwise as might be granted at the

(*t*) 38 & 39 Vict. c. 92, s. 4.

(*u*) Order xxxviii.

(*v*) 37 & 38 Vict. c. 42, ss. 4, 24.

(*w*) 37 & 38 Vict. c. 42, ss. 4, 32.

(*x*) *Ibid.*, ss. 4, 16, 35.

See *ante*, pp. 8, 11.



time of the passing of the Act, by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the court may determine (*y*).

The general orders, rules, and forms of the chancery division of the high court regulating for the time being the mode of proceeding under "The Companies Acts, 1862 and 1867," are to be the orders, rules, and forms in all proceedings in the county courts for the winding-up of a society under the above provisions, so far as the same are applicable; but the court may appoint another bank in place of the Bank of England, for the purposes of the rules where the latter would be inconvenient (*z*).

*Winding-up of Industrial Societies.* Any society registered under "The Industrial and Provident Societies Act, 1862 (*a*), may be wound-up either by the court voluntarily, in the same manner, and under the same circumstances, under and in which any company may be wound-up under any Acts or Act for the time being in force for winding-up companies, and all the provisions of such Acts or Act with respect to winding-up will apply to such society, with this exception, that the court having jurisdiction in the winding-up will be the county court of the district in which the office of the society is situated (*b*). The rules and orders of the chancery division of the high court are also to be observed in these proceedings so far as they are applicable; and the court may name some other bank in place of the Bank of England for the purposes of the rules and orders (*c*).

*Literary and Scientific Institutions Act, 1854.* Any number, not less than three-fifths, of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution applicable thereto, if any, and if not, then as the governing body shall find expedient; provided that in the event of any dispute arising among the said governing body, or the members of the institution, the adjustment of its affairs shall be referred to the judge of

(*y*) 37 & 38 Vict. c. 42, ss. 4, 36.

(*z*) Order xxxix.

(*a*) 25 & 26 Vict. c. 87.

(*b*) *Ibid.*, s. 17. No appeal lay to the common law courts under these proceedings. Any appeal

still must be in accordance with or under the provisions of the Companies Act, 1862 (25 & 26 Vict. c. 89, s. 124): *Henderson v. Bamber*, 35 L. J. C. P. 65.

(*c*) Order xxxix.

the county court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or, if he find it necessary, shall direct that proceedings shall be taken in the high court for the adjustment of the affairs of the institution (*d*).

If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said institution, or any of them, but shall be given to some other institution, to be determined by the members at the time of the dissolution, or in default thereof, by the judge of the county court aforesaid; provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of shareholders in the nature of a joint-stock company (*e*).

Proceedings under this Act are commenced by plaint and summons in the ordinary way.

*Friendly Societies Act, 1875.* Every dispute between a member, or person claiming through a member, or under the rules of a registered society, and the society or an officer thereof, is to be decided in the manner directed by its rules (*f*). But in every case of dispute cognisable under the rules by justices, the parties may enter into a consent referring such dispute to the county court, and it will then have power to hear and determine the matter in dispute (*g*). If the rules contain no direction as to disputes, or if no decision be made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and it may hear and determine the matter in dispute (*h*).

There seems to be nothing in these provisions to alter the law as already established under the now-repealed Acts of 1855 and 1858—that, where the rules provide a forum for the settlement of disputes, that forum, subject to the above provisions, is the only forum which can be appealed to (*i*). The county court judge has, however, as in all cases,

(*d*) 17 & 18 Vict. c. 112, s. 29.

(*e*) *Ibid.*, s. 30.

(*f*) 38 & 39 Vict. c. 60, s. 22.

(*g*) *Ibid.*, s. 22, sub-div. *c*.

(*h*) *Ibid.*, s. 22, sub-div. *d*. See

form 190 for order.

(*i*) *Denton v. Marshall*, 1 H. & C. 654; 32 L. J. Ex. 89; *Ex parte Woodbridge*, 31 L. J. Q. B. 122; 10 W. R. 250; 5 L. T. N. S. 609.

clearly jurisdiction to entertain a matter brought before him under the Act so far as to enable him to ascertain whether he has jurisdiction or not (*k*).

An application for the enforcement of any decision in reference to disputes made by the forum appointed by the rules of a registered society may be made to the county court (*l*), and it has also, *ex necessitate*, power to enforce its own orders (*m*).

The court may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, as may be granted by any court of law or equity; such discovery to be made on behalf of the society by such officer of the same as the court may determine (*n*).

The above provisions apply only to registered societies; but, in regard to uncertificated or unregistered societies, the provisions of section 44 of the Friendly Societies Act, 1855, are temporarily retained until the society is registered under the Act of 1875, or until the 31st December, 1878, whichever shall first happen (*o*). The whole Act of 1855 being repealed by the new Act, it is conceived that it was intended to treat section 44 as if re-enacted in the body of the Act of 1875. In that event the words, "shall be decided in the manner hereinbefore provided," which appear in section 44, will have reference to the practice just noticed. But the section is so early in the new act that no "manner" is thereinbefore provided. Hence it is not improbable that it may be held that proceedings under section 44 must be taken in accordance with the repealed Act of 1855. The point is of some importance, as the county court alone had jurisdiction under the repealed Acts (*p*).

The provisions referred to are these: In the case of any friendly society established for any of the purposes mentioned in section 9 of the Friendly Societies Act, 1855, or for any purpose which is not illegal, having written or printed rules, whose rules have not been certified by the registrar, provided a copy of such rules shall have

(*k*) *Skipton Industrial Society v. Prince*, 33 L. J. Q. B. 323.

(*l*) 38 & 39 Vict. c. 60, s. 22.

(*m*) See form of order and warrant of execution, forms 191, 192.

(*n*) 38 & 39 Vict. c. 60, s. 22, sub-div. e.

(*o*) *Ibid.*, s. 7.

(*p*) See *post*, pp. 45, 49, where the repealed sections of the Friendly Societies Act, 1855, are duly noticed.

been deposited with the registrar, every dispute between any member or members of such society and the trustees, treasurer, or other officer, or the committee of such society, *shall be decided in the manner hereinbefore provided* with respect to disputes in the case of societies to be established under the Act, and the sections of the Act provided for such decision shall be applicable to such uncertified societies (*q*). Under this section it was held that where disputes had arisen in an uncertified society, and after the disputes had arisen, but before a plaint was entered, a copy of the rules was deposited with the registrar, the county court had no jurisdiction (*r*). It seems that the court would or would not have jurisdiction according as the rules had or had not been deposited with the registrar before the dispute (*s*). Where a society enrolled its members in 1832, under 10 Geo. 4, c. 57, and shortly afterwards framed new rules which were never enrolled or certified, it was held that it was a subsisting society under its original rules (*t*).

Under the Act of 1855, sect. 41, it was held that the court had jurisdiction to entertain a dispute between the committee of management and any of the members of a society as to the propriety of the mode of convening, and the manner and place of holding, special general meetings for the purpose of altering or amending the rules of the society (*u*). So it was held that if a member was improperly expelled, the court had power to reinstate him, and give proper relief; but that if the judge found that the matter came within the provisions of any rules appointing another tribunal, he ought then to order it to hear and determine the matter (*v*). These decisions appear to be equally applicable to cases arising in registered societies under the new Act. The old Act confined the right to apply for relief to "persons interested"; and it was held that trustees who were not themselves members of a society, and were not acting with the authority and sanction of the members, were not able to obtain the benefit of the provisions as to disputes (*w*). The new Act,

(*q*) 18 & 19 Vict. c. 63, s. 44.

(*r*) *Smith v. Pryse*, 7 El. & Bl. 339; 26 L. J. Q. B. 95; 5 W. R. 295.

(*s*) See on this point a case, *Santler v. Pounds*, cor. Lonsdale, J., Dartford C. C., 14 S. J. 798.

(*t*) *In re Meredith*, 1 C. B. N. S. 216.

(*u*) *Hoey v. McFarlane*, 4 C. B. N. S. 718; 4 Jur. N. S. 785.

(*v*) *Ex parte Wooldridge*, ante, p. 43.

(*w*) *Hall v. McFarlane*, 2 C. B. N. S. 796; 27 L. J. C. P. 41.

however, provides that "the member or person aggrieved" may apply; and these words may possibly be held to extend the scope of the relief beyond that of the former Act.

*Societies receiving contributions by collectors.* Disputes in friendly and industrial assurance companies receiving contributions by means of collectors, at a greater distance than ten miles from the registered office of the society, or in any industrial assurance companies, are provided for by the Act in a special section (*x*). So it is enacted that in all disputes between a society and any member or person injured, or any person claiming through a member or person injured, or under the rules, such member or person may, notwithstanding any provisions of the rules of such society to the contrary, apply to the county court or to the court of summary jurisdiction for the place where such member or other person resides, and such court may settle such dispute in manner therein provided (*y*). This provision will not apply, however, to any assurance with any such company, the premiums in respect of which are receivable at greater periodical intervals than two months (*z*).

*Cattle assurance societies.* All moneys payable by a member to a registered cattle assurance society, or to any society specially authorised by the Treasury, are deemed to be a debt due from such member to the society, and are recoverable as such in the county court of the district in which such member resides (*a*).

*Trades-unions.* The provisions of "The Friendly Societies Act" do not extend to any trade-union; and the attempted registration of any trade-union, either under that Act or "The Industrial and Provident Societies Act," to be presently noticed, would be absolutely void (*b*). No application can be entertained, under the foregoing or any other provisions, by the county court for the settlement of any dispute in any such society, nor can certain of their contracts be enforced in any court (*c*).

(*x*) 38 & 39 Vict. c. 60, s. 30.

(*y*) *Ibid.*, s. 30, sub-s. 10.

(*z*) *Ibid.*, sub-s. 13.

(*a*) *Ibid.*, s. 31.

(*b*) 34 & 35 Vict. c. 31, s. 5.

This Act, to render trades-unions not unlawful, was passed after the decisions in *Hornby v. Close*, L. R. 2 Q. B. 153, 36 L. J. M. C. 43, and *Farrar v. Close*, L. R. 4 Q. B. 602, 38 L. J. M. C. 132.

(*c*) 34 & 35 Vict. c. 31, s. 4.

See a case of *M<sup>rs</sup> Queen v. Quirk*, 18 S. J. 650, *cor.* Russell, Q.C., Manchester C. C., which was a claim for sick allowance against a trade-union duly registered under the Trades Unions Act, where the learned judge held that the claim could not be entertained, observing in his judgment, "The purpose of the statute was, there-

*Practice.* In proceedings under the Act by a member or person claiming through a member, the society may be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society within the jurisdiction of the court in which the proceeding is brought, with the addition of the words, "on behalf of the society," naming the same (*d*). Or the trustees of the society, or other officer authorised by the rules of the society, may be sued, as well as sue, in their proper names, without other description than the title of their office (*e*). Proceedings in regard to disputes must be referred by action commenced by plaint and summons in the ordinary way, in which the claiming or aggrieved member or other person must be plaintiff, and the society by such persons as above as the plaintiff may elect to sue defendant (*f*). The summons, or the particulars, must state correctly the nature of the dispute referred and the relief which the plaintiff claims (*g*).

All applications to the court by the trustees or authorised officers of a friendly society, for the enforcing in a summary way of the provisions of section 20, as to security and delivery of property by a trustee or officer, must, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way, and the trustees or authorised officers must be plaintiffs, and the person against whom application is made must be defendant (*h*). If the application be made by action without putting the bond in suit, the summons, or the particulars annexed to it, must state shortly the nature of the Act required to be done or the neglect complained of (*i*). If the act required to be done be the delivering up of any property, the summons or the particulars annexed to it must contain an intelligible description of the property required to be given up (*j*).

fore, answered by removing the previous disabilities, and by extending the benefits of legislation, so as to make those societies legal to a certain extent, and to protect their funds; but it was not the intention of the statute to give the members any status before any court of justice for the purpose of enforcing an agreement come to between themselves, the object of which, amongst others, was to provide benefits for any

members of the society. That was rendered more clear still by the 5th section of the Act."

(*d*) 38 & 39 Vict. c. 60, s. 21, sub-s. 2.

(*e*) *Ibid.*, sub-s. 1.

(*f*) Order xxxv., rule 4.

(*g*) *Ibid.*, rule 5.

(*h*) *Ibid.*, rule 1. See 38 & 39 Vict. c. 60, s. 20.

(*i*) *Ibid.*, rule 2.

(*j*) *Ibid.*, rule 3.



The summons against the person sued on behalf of a society will be sufficiently served by personally serving the same on such person, or by leaving a true copy at the registered office of the society, or any place of business of the society within the jurisdiction of the court in which the proceeding is brought, or, if such office or place of business be closed, by posting such copy on the outer door. Where personal service is not made, or the copy left at the registered office of the society, a copy must be transmitted by registered letter, addressed to the committee of management at the registered office of the society, and posted at least six days before any further step is taken on the summons or other process (*l*). Subject as above, the ordinary practice of the court must be followed in these proceedings.

*Industrial and provident societies.* The Industrial and Provident Societies Act, 1867 (which incorporates so much as is unrepealed of the Industrial and Provident Societies Act, 1862), extends to societies registered under the Act of 1867 such of the provisions of the Friendly Societies Acts, 1855 and 1858, as relate to the determination of disputes by the county courts (*l*); and it seems to be provided by the same section that the repeal of those provisions in regard to friendly societies shall not affect their application to industrial societies. It is, therefore, still necessary to refer to the now-repealed Acts for provisions which nevertheless closely resemble those just noticed in regard to friendly societies. These provisions are contained in the next four paragraphs. It is conceived that section 44, already noticed (*m*), applying only to registered societies, can hardly be applicable to a society duly registered under the Industrial Act, and that an unregistered industrial and provident society cannot avail itself of any of the above provisions.

All applications for the settlement of disputes that may arise, or may have arisen, in any society, the rules of which do not prescribe any other mode of settling such disputes (*n*), or to enforce the decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall be made by the said arbitrators within forty days after application has been made by the member or person claiming through or under

(*l*) 38 & 39 Vict. c. 60, s. 21,  
sub-s. 1.

(*l*) 30 & 31 Vict. c. 117, s. 3.

(*m*) *Ante*, p. 45.

(*n*) See *Denton v. Marshall*,  
*Ex parte Wooldridge*, *ante*, p. 43.



a member, or under the rules of the society, shall be made to the county court of the district within which the usual or principal (o) place of business of the society shall be situate. Such court shall, upon the application of any person interested (p) in the matter, entertain such application, and give such relief, and make such orders and directions in relation to the matter of such application, as hereinafter mentioned, or as may now be given or made by the high court in respect either of its ordinary or its special or statutory jurisdiction. The decision of such county court upon and in relation to such application as aforesaid shall not be subject to any appeal (q).

In all cases where the order of such county court shall be for the payment of money, the same may be enforced in the same manner as the ordinary judgments of such courts are enforced. Where the order shall be for the doing of some act, not being for the payment of money, it shall be lawful for the judge of such county court, in his said order, to order the party to do such act, or that in default of his doing it he shall pay a certain sum of money; and in case he refuse or neglect to do the act required, upon demand in that behalf, the sum of money or penalty named in the said order may then be recovered in the same manner as a judgment for debt or damages in such court; and it shall not be lawful to remove the same by *certiorari* or other writ or process to any superior court of record (r).

The lord chancellor may make such orders for regulating the proceedings by and before the judges of county courts as he may think fit (s).

In proceedings under the Acts against a society, it shall be sufficient to make the secretary or other officer of the society, at the time of the plaint or complaint being entered or made, the defendant in such proceeding, by his name and the title of the office he held in the society; and the proceedings on such plaint or complaint shall be commenced and carried on against such officer on behalf of the society, and shall not be abated or prejudiced by the death, resignation, or removal, or by any act of such officer after the commencement thereof; and the summons to be issued to such officer may be served by leaving the same at the

(o) This does not mean its principal place only: *Shea v. United Society of St. Patrick*, L. R. 3 C. P. 21; 37 L. J. C. P. 50; 16 W. R. 84; 17 L. T. N. S. 176.

(p) See *Hull v. McFarlane*, ante, p. 45.

(q) 18 & 19 Vict. c. 63, s. 41.

(r) *Ibid.*, s. 42.

(s) *Ibid.*, s. 43.

usual place of business of the society (*t*). No rules have been made as to these proceedings; it is conceived, however, that the practice under "The Friendly Societies Act, 1875," may be followed.

### PART III. THE DISTRICT IN WHICH PROCEEDINGS MUST BE COMMENCED.

Having ascertained whether a cause of action is one over which a county court has jurisdiction, it is next of importance to know in which court the action ought to be commenced. This is to be found by reference to the first section of the Act of 1867, which enacts as follows: "A plaint may be entered in the county court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of bringing the action or suit; *or* it may be entered, by leave of the judge or registrar, in the county court within the district of which the defendant or one of the defendants dwelt or carried on business at any time within six calendar months next before the time of action or suit brought; *or* with the like leave, in the county court in the district of which the cause of action or suit wholly or in part arose" (*u*).

*Metropolitan districts.* As will be seen hereafter (chap. xvii.), England is divided into districts, and a county court is established in each. The city of London forms a district of itself, and the City of London Court is now a county court like the others, except that it retains certain privileges not enjoyed by them (*v*). By the Act of 1856 (*w*) it is provided that: "Where a plaintiff shall dwell or carry on business in the district of the Bloomsbury county court of Middlesex, or in the district of the Brompton county court of Middlesex, or in the district of the Clerkenwell county court of Middlesex, or in the district of the Lambeth county court of Surrey, or in the district of the Marylebone county court of Middlesex, or in the district of the Shoreditch county court of Middlesex, or in the district of the Southwark county court of Surrey, or in the district of the Westminster county court of Middlesex, or in the district of the Whitechapel county court of Middlesex, and

(*t*) 21 & 22 Vict. c. 101, s. 7.

(*u*) 30 & 31 Vict. c. 142, s. 1.

(*v*) *Ibid.*, ss. 32, 35; and see *Levenson v. Reg.*, 38 L. J. M. C.

97, and *Blades v. Lawrence*, L. R.

9 Q. B. 374; 43 L. J. Q. B. 133;

30 L. T. N. S. 378; 22 W. R. 643.

(*w*) 19 & 20 Vict. c. 108, s. 18.

the defendant shall dwell or carry on business in the district of any of the said courts, the summons may issue and be served either in the district in which the plaintiff shall dwell or carry on business, or in the district in which the defendant shall dwell or carry on business." A provision in the Act of 1867 practically adds the city of London to the above-mentioned districts, and places plaintiffs and defendants "residing" or carrying on business in the city upon the same footing as those in the other metropolitan districts, and enables them to sue and be sued accordingly in the City of London Court (*c*). The effect of these provisions, applicable only where both plaintiff and defendant dwell or carry on business in the above metropolitan districts or in the city of London, although not in the same district, is to give the plaintiff an additional power to sue in the district in which he dwells or carries on business, without any leave of judge or registrar, and without its being necessary for any part of the cause of action to arise within the district. In cases not within these provisions, the plaintiff cannot sue in the district in which he dwells or carries on business, unless the defendant also resides or carries on business there, or unless some part of the cause of action arises within the district, and then only in the last case by leave of the judge or registrar (*y*). It is no objection to the jurisdiction of one of these courts that the plaintiff has become resident within the district of the court for the very purpose of giving it jurisdiction, if residence was actually and *bonâ fide* enjoyed before the issuing of the summons (*z*). It is conceived that the expressions "dwell" and "reside," which are strangely enough introduced into different sections of the same Act, mean precisely the same thing.

*Generally.* If a defendant has two permanent residences, it seems that he dwells and may be sued in either of the districts in which they are situate (*a*); but this decision is directly opposed to a previous one in the Court of Queen's Bench (*b*). A temporary residence in a district by a person who has a permanent residence elsewhere does not constitute a dwelling within the district of his temporary residence (*c*); thus a temporary or compulsory residence

(*c*) 30 & 31 Vict. c. 112, s. 3.

(*y*) *Ibid.*, s. 1, *supra*.

(*z*) *Massey v. Barton*, 2 H. & N. 597; 27 L. J. Ex. 101.

(*a*) *Batler v. Ableswhite*, 6 C. B. N. S. 740; 28 L. J. C. P. 292.

(*b*) *Bailey v. Bryant*, 1 E. & E. 340; 28 L. J. Q. B. 86.

(*c*) *Macdonald v. Paterson*, 11 C. B. 755; 21 L. J. C. P. 755; *Kerr v. Haynes*, 29 L. J. Q. B. 70; 8 W. R. 277; 2 L. T. N. S. 211.

in gaol does not make the gaol his place of dwelling (*d*). But if he has no permanent dwelling, he dwells and may be sued in the district in which he temporarily resides (*e*).

A railway company dwells and carries on business in the district in which its principal office or station is situate, and not at the intermediate stations on the line (*f*), nor at a receiving-house or booking-office, kept by an agent for the receipt and booking of parcels and packages for all railways generally (*g*). A trading company, whether or not registered under "The Companies Act, 1862," dwells and carries on business at the place where the business and management of the company is substantially conducted, and not necessarily at its registered office (*h*). Nor is it necessarily in the district where its property is situated, and its immediate objects carried out. So, where a pier company had a pier at Aberystwith, but the registered office was at Westminster, and the substantial business of the company and its negotiations were carried on there, it was held to dwell at Westminster, and not at Aberystwith (*i*). A company carrying on business in London, which employs in a country town a general commission agent, who transacts the company's business in such town in an office for which the company pays him rent, does not carry on business in that town (*j*). A temporary carrying on of business in a district by a person whose permanent place of business is elsewhere, does not make it his place of business for the purpose of being sued; as where a contractor erects workshops for men near work upon which he is engaged (*k*). A surgeon who resides in one district, and daily attends patients in another, carries on

(*d*) *Dunston v. Paterson*, 4 C. B. N. S. 267; 28 L. J. C. P. 97.

(*e*) *Alexander v. Jones*, L. R. 1 Ex. 133; 35 L. J. Ex. 78; 14 W. R. 400; 13 L. T. N. S. 719.

(*f*) *Brown v. London and North Western Railway Co.*, 4 B. & S. 326; 32 L. J. Q. B. 318; 11 W. R. 884; *Shiels v. Great Northern Railway Co.*, 30 L. J. Q. B. 331; 9 W. R. 739; 4 L. T. N. S. 479; *Adams v. Great Western Railway Co.*, 6 H. & N. 404; 30 L. J. Ex. 124; 9 W. R. 254; 3 L. T. N. S. 631.

(*g*) *Minor v. London and North*

*Western Railway Co.*, 1 C. B. N. S. 325; 26 L. J. C. P. 39.

(*h*) *Keynsham Lime Co. v. Baker*, 2 H. & C. 729; 33 L. J. Ex. 41; 12 W. R. 156; 9 L. T. N. S. 418; *Taylor v. Crowland Gas Co.*, 11 Ex. 1; 24 L. J. Ex. 233; 24 L. T. 118.

(*i*) *Aberystwith Pier Co. v. Cooper*, 35 L. J. Q. B. 44; 14 W. R. 28; 13 L. T. N. S. 273.

(*j*) *Corbett v. General Steam Navigation Co.*, 4 H. & N. 482; 28 L. J. Ex. 214; 7 W. R. 458.

(*k*) See *per Hill, J.*, *Shiels v. Great Northern Railway Co.*, *supra*; *Gorslett v. Harris*, 29 L. T. 75.

business within the latter district (*l*). Servants do not carry on business at their masters' premises (*m*); so clerks to the Admiralty and Privy Council do not carry on business at the offices of those bodies where they are daily engaged (*n*).

Under the section of the 9 & 10 Vict. c. 95, viz., sect. 60, which enabled a plaintiff to sue in the district in which the cause of action arose, it was held that the whole cause of action must arise within the district to give the court jurisdiction; and so, if any material part of the cause of action occurred or arose out of the district, the court had no jurisdiction (*o*). The section now under consideration has enlarged this jurisdiction by the addition of the words "wholly or in part." But though they are comprehensive, it is doubtful whether the courts would hold that they would give jurisdiction where some immaterial part of the cause of action only had arisen within the district. It is conceived that in the construction of the section the courts would probably hold that some material part at least of the cause of action must arise within the district in which the plaintiff sought to commence an action (*p*). In an action for the price of goods sold and delivered, the delivery is a material part of the cause of action (*q*); so also where the goods are delivered by a carrier, who is paid by the sender of the goods (*r*). And it is conceived that where delivery is made, under a contract in writing, or under an oral contract rendered "good" by subsequent acceptance, to a carrier, the recognised agent for the vendee, a material part of the cause of action arises at the place of such delivery (*s*). The order for the goods is a material part (*t*); and no distinction has been made between cases which are taken out of the

(*l*) *Mitchell v. Hender*, 23 L. J. Q. B. 273.

(*m*) See *per Rolfe, B., Sangster v. Kay*, 5 Ex. 388.

(*n*) *Buckley v. Hann*, 5 Ex. 43; 19 L. J. Ex. 151; *Sangster v. Kay*, 5 Ex. 386; S. C., *nom. Sangster v. Cave*, 19 L. J. Ex. 314.

(*o*) *Hernaman v. Smith*, 10 Ex. 659; 24 L. J. Ex. 175; *Borthwick v. Walton*, 15 C. B. 501; 24 L. J. C. P. 83.

(*p*) See *Green v. Beach*, L. R. 8 Ex. 208; 42 L. J. Ex. 151; 21 W. R. 856.

(*q*) *Kemp v. Clark*, 12 Q. B. 647; 17 L. J. Q. B. 305.

(*r*) *Arndt v. Porter*, 30 L. J. Ex. 19.

(*s*) *Smith v. Hudson*, 6 B. & S. 431; 34 L. J. Q. B. 145; 13 W. R. 683; 12 L. T. N. S. 377; *Norman v. Phillips*, 14 M. & W. 277; 14 L. J. Ex. 306; *Borthwick v. Walton*, *supra*. But see *Aris v. Orchard*, and observations thereupon, *post*, p. 54.

(*t*) *Borthwick v. Walton*, 15 C. B. 501; 24 L. J. C. P. 83; *Jackson v. Beaumont*, 11 Ex. 300; 24 L. J. Ex. 301; *Gold v. Turner*, L. R. 10 C. P. 149.

operation of the Statute of Frauds by delivery and acceptance, and those where the contract is in writing, or where there is a memorandum signed by the party to be charged. So an oral order for goods was held to be a material part (*u*); and a mere oral offer to purchase, which was afterwards accepted by the vendor, was held to be a material part in an action for short delivery (*v*). If the contract upon which the plaintiff is suing is in writing, the signing of the contract is a material part (*w*). Where a letter, ordering work to be done, was written and posted in A district, and was received by the person who did the work in pursuance of it in B district, it was held, in an action for the work done, that the whole cause of action arose in the B district. The sending of the letter, it was suggested, was the same as if the sender had sent a person to the B district, who had there made the contract (*x*). A plaintiff orally agreed with the defendant in A district to purchase a horse to be delivered in B district. The defendant afterwards brought the horse to the plaintiff in the B district, when the plaintiff required a warranty, which was given, and the horse delivered. In an action for breach of the warranty brought in the B district, it was held that what had taken place in the A district did not constitute a material or any part of the cause of action (*y*). The case appears at first sight irreconcilable with others just cited; but upon examination of the *dicta* and judgments, it appears to have been held by the court that the parties had not finally agreed upon any terms of sale upon the first occasion, or, that what took place when the warranty was demanded and given, was equivalent to a rescision of the original contract and the making of a new one, with the addition of a warranty. In that view the whole cause of action obviously arose at B. Should the decision amount to more than this, some substantial ground appears for doubting the cases above mentioned, in which it has been held that the oral order for goods is a material part of the cause of action, where delivery and acceptance of goods is relied on, to take a case out of the operation of the Statute of Frauds (*z*).

(*u*) *Borthwick v. Walton*, *supra*.

(*v*) *Green v. Beach*, *supra*.

(*w*) *Norman v. Marchant*, 7 Ex. 723; 21 L. J. Ex. 256.

(*x*) *Newcombe v. De Roos*, 2 E. & E. 271; 29 L. J. Q. B. 4.

(*y*) *Aris v. Orchard*, 6 H. & N. 160; 30 L. J. Ex. 21.

(*z*) See a case, *Cooper v. Caswell*, *cor. Stephen, J.*, of Sleaford county court, in which he held in a similar case that an oral contract to purchase goods in a district did not give the court jurisdiction: 16 S. J. 636.



Where a debt is composed of several items connected together so as to form one cause of action, the fact of one item being incurred wholly or in some material part within the jurisdiction of a court, will give it jurisdiction over the whole debt (*a*), even though the items be separated by an interval of several years (*b*). In an action by a solicitor for the cost of preparing a mortgage security, the agreement to give the mortgage was held to be a material part of the cause of action (*c*). In an action against an administrator, the grant of the letters of administration is a material part (*d*).

Where leave is required, it is a condition precedent to the issue of the summons, and if the summons is issued before leave is obtained the court has no jurisdiction (*e*).

The particular decisions bearing upon bills of exchange will be found in chap. xi., and the provisions as to where the plaint must be entered in actions of ejectment, and in actions for the recovery of small tenements, in chap. xiii. Where there is any departure from the general provisions above noticed, in any of the cases in which jurisdiction is specially given to county courts by statutes other than County Courts' Acts (see *ante*, p. 23), it is noticed in the paragraph relating to such special jurisdiction.

*Actions by or against officers of the court.* Actions against officers of the court may be brought in the district in which the defendant is an officer, or in any adjoining district the judge of which is not the judge of a court of which the defendant is an officer (*f*). It seems that by virtue of this statute the plaintiff has a right to choose any adjoining district, even if in another county, and that, even if the provisions of the 9 & 10 Vict. c. 95, s. 138 (*g*), apply at all to actions brought in county courts, he may elect as to which statute he will sue under (*h*). A judge proposing to sue any person dwelling or carrying on business in any district of which he is judge may bring his action in the county court of any adjoining district of

(*a*) *Wood v. Perry*, 3 Ex. 442; 18 L. J. Ex. 161; *Bonsey v. Wordsworth*, 18 C. B. 325; 25 L. J. C. P. 205.

(*b*) *Copeman v. Hart*, 14 C. B. N. S. 731; 33 L. J. C. P. 107.

(*c*) *Jackson v. Grimley*, 16 C. B. N. S. 380; 33 L. J. C. P. 238; 12 W. R. 686; 10 L. T. N. S. 340.

(*d*) *Fuller v. Mackay*, *In re*

*Fuller*, 2 E. & B. 573; 22 L. J. Q. B. 415.

(*e*) *Brown v. London and North Western Railway Co.*, 4 B. & S. 326; 32 L. J. Q. B. 318; 11 W. R. 884.

(*f*) 19 & 20 Vict. c. 108, s. 21.

(*g*) See *post*, chap. xvii.

(*h*) *Partridge v. Elkington*, L. R. 6 Q. B. 82; 40 L. J. Q. B. 49; 19 W. R. 385.



which he is not judge; and any person proposing to sue a judge may bring his action in any county court of a district adjoining the district of which the defendant is judge (*i*).

If an action be brought by an officer of a county court in the court of which he is an officer, except in case of the registrar suing as official assignee (*j*), the judge must, at the request of the defendant, order that the venue be changed, and the cause be sent for hearing to the court of some convenient district of which he is not the judge (*k*).

*Debtors Act, 1869.* Where proceedings are intended to be taken upon a judgment with a view to the imprisonment of a debtor, under "The Debtors Act, 1869," (*l*) they must be commenced in the district within which the debtor resides, or carries on business, or is employed, unless leave is obtained from the judge of the court in which judgment was obtained to proceed in such court (*m*).

By virtue of the statutes already noticed (*ante*, p. 50), the metropolitan districts and the city of London are, for the purpose of the issue of judgment-summonses, practically one district, and no leave is therefore required to proceed in any such district in which judgment has been obtained, if both plaintiff and defendant reside or carry on business in one of the districts, although not in the same (*n*).

*Justices.* If an action be brought in a county court against a justice for anything done under or in pursuance of the Act for the prevention of cruelty to animals, it must be brought in the district in which, and within two calendar months from the time when, the act complained of was committed (*o*).

#### PART IV. THE PENALTY UPON PLAINTIFFS WHO SUE IN THE HIGH COURT INSTEAD OF A COUNTY COURT.—COSTS.

The Judicature Acts, whilst expressly extending the operation of section 5 of "The County Courts Acts, 1875,"

(*i*) 19 & 20 Vict. c. 108, s. 19.

(*j*) It is conceived that these words should now be read "trustee," to meet cases in which the registrar is trustee under the Bankruptcy Act, 1869.

(*k*) 19 & 20 Vict. c. 108, s. 20. See, for the further proceedings, *post*, chap. iii., part 5, Change of Venue.

(*l*) See *post*, chap. viii., part 3.

(*m*) 19 & 20 Vict. c. 108, s. 48; Order xix., rule 7.

(*n*) 19 & 20 Vict. c. 108, s. 18; 30 & 31 Vict. c. 142, s. 3; Order xix., rule 7.

(*o*) 12 & 13 Vict. c. 92, ss. 27, 28. See, for other provisions as to justices, 11 & 12 Vict. c. 44.

to certain actions in the high court (*p*), also contain the following provision: Subject to the provisions of the Act, the costs incident to all proceedings in the high court shall be in the discretion of the court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled, according to the rules hitherto acted upon in courts of equity: provided that, where any action or issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial for good cause shown, the judge before whom such action or issue is tried, or the court, shall otherwise order (*q*).

Before the Act of 1867, irrespective of the provisions of the County Courts' Acts and the repealed provisions of "The Common Law Procedure Act, 1860," the general law as to the right to costs in actions at law may be shortly stated to have been as follows: The Statute of Gloucester (*r*) gave a successful plaintiff his full costs in almost all cases; but his right to them was curtailed by the 21 Jac. 1, c. 16, s. 6, 43 Eliz. c. 6, and 3 & 4 Vict. c. 24, which dealt with cases in which the plaintiff recovered less than 40*s*. In actions on the case for slanderous words, actionable in themselves, if the plaintiff recovered less than 40*s*., he had no costs, unless the judge certified under the 3 & 4 Vict. c. 24, and in that case he could only recover as much costs as damages, by virtue of the 21 Jac. 1, c. 16, s. 6. In other actions on the case, and in actions of trespass, if he recovered less than 40*s*., he could have no costs whatever, unless the judge certified that the action was brought to try a right, besides the mere right to recover damages, or that the trespass or grievance was wilful and malicious, or unless it was suggested on the roll that the action was for a trespass to lands, &c., after notice. In other personal actions, if he recovered less than 40*s*., he was entitled to his full costs, unless the judge who tried the cause certified under the 43 Eliz. c. 6, so as to deprive him of them.

The Act of 1867 provided, without expressly repealing any of these provisions, that if, in any action commenced in any of the superior courts (*s*), the plaintiff recovered a sum not exceeding 20*l*., if the action was founded on con-

(*p*) 36 & 37 Vict. c. 66, s. 67.

(*q*) Jud. Act, order iv.

(*r*) 6 Edw. 1, c. 1.

(*s*) The Palatinate Courts—*e.g.*, the Common Pleas at Lancaster—were superior courts:

*Oulton v. Radcliffe*, L. R. 9 C. P. 189. The jurisdictions of the courts of Durham and Lancaster are now transferred to the High Court of Justice: 36 & 37 Vict. c. 66, s. 16.

tract, or 10*l.* if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he should not be entitled to any costs, unless the judge certified on the record that there was sufficient reason for bringing the action in the superior court; or unless the court or a judge at chambers should, by rule or order, allow them (*t*). It was held that these provisions did not repeal the Act of James; and consequently, where in an action of slander imputing felony to the plaintiff the verdict was for less than 40*s.*, and the judge certified, under the 3 & 4 Vict. c. 24, s. 2, that the slander was wilful and malicious, and under the 30 & 31 Vict. c. 142, s. 5, that there was sufficient reason for bringing the action in the superior court, the court held that the certificates of the judge could not enable the plaintiff to recover more costs than damages, and that the court had no power to allow more costs than the certificates would entitle him to (*u*). It was also held, by many judges at Nisi Prius, that the provisions of the 3 & 4 Vict. c. 24, s. 2, still remained in force; and in actions of tort, in which verdicts were for less than 40*s.*, certificates for costs were often refused on the ground that the judge would be compelled to certify, not only under the 30 & 31 Vict. c. 142, but also under the 3 & 4 Vict. c. 24, that the grievance complained of was wilful and malicious. It is doubtful whether this view was, however, quite accurate, but the point was never decided. It was also held in several cases (*v*) that the section applied to all actions, whether they could be commenced in the county court or not—*e.g.*, slander or malicious prosecution.

The provisions of the Judicature Act, extending section 5

(*t*) The following cases decided upon points arising as to the period of the commencement of the Act, and its operation on pending cases, may perhaps be useful upon points which may arise under the new Act:—*Wood v. Riley*, L. R. 3 C. P. 26; 37 L. J. C. P. 24; *Mount v. Taylor*, L. R. 3 C. P. 645; 37 L. J. C. P. 325; *Levi v. Sanderson*, L. R. 4 Q. B. 330; 38 L. J. Q. B. 135; *Butcher v. Henderson*, L. R. 3 Q. B. 325; 37 L. J. Q. B. 133; *Restall v. London and South Western Railway Co.*, L. R. 3 Ex. 141; 37 L. J. Ex. 89; *Oldreeve v. Puckridge*, L. R. 3 Ex. 145;

37 L. J. Ex. 90; *Ings v. London and South Western Railway Co.*, L. R. 4 C. P. 17; 38 L. J. C. P. 86.

(*u*) *Marshall v. Martin*, L. R. 5 Q. B. 240; 39 L. J. Q. B. 85; 21 L. T. N. S. 788; 15 W. R. 378; following *Evans v. Rees*, 9 C. B. N. S. 391; 30 L. J. C. P. 16.

(*v*) *Sampson v. Mackay*, L. R. 4 Q. B. 643; 38 L. J. Q. B. 245; 17 W. R. 883; 20 L. T. N. S. 837; *Craven v. Smith*, L. R. 4 Ex. 146; 38 L. J. Ex. 90; 17 W. R. 410; 20 L. T. N. S. 400; *Gray v. West*, L. R. 4 Q. B. 174; 38 L. J. Q. B. 78; 17 W. R. 497; 20 L. T. N. S. 221.

above noticed to all actions commenced or pending in the high court, limits its operation to those actions in which any relief is sought which can be given in a county court (*w*), and thus overrules the decisions just mentioned so far as concerns actions in the high court. In other respects this *section* does not alter the law as to costs, as it existed prior to the Judicature Acts. Order lv. (*x*), made under the amending Act of 1875, and included in the schedule to it, does, however, introduce material alterations. It practically repeals the Statute of Gloucester in some of those cases in which the judge exercises his discretion, and orders that the plaintiff shall not have costs.

Giving order lv. its full effect, and taking all the provisions together, the power of the judge to *deprive* a plaintiff of costs is absolute. However, where actions or issues are tried by jury, if he recovers more than 20*l.* in contract or 10*l.* in tort, the plaintiff will *primâ facie* be entitled to costs; but on application to the judge at the trial, or to the court, he may "for good cause" be deprived of them. The order has also the effect of giving the judge the control over the costs of the defendant. Hence, a successful defendant may now, as well in actions formerly brought in common law courts as in those formerly brought in equity courts, be deprived of his costs by order of the judge. When the trial is by jury, the costs will follow the event, unless application be made and allowed under the provisions above mentioned.

Whilst the judge has the discretion mentioned above in regard to the deprivation of costs, he is more fettered in regard to the *grant* of them to plaintiffs who recover sums not exceeding 20*l.* in actions of contract or 10*l.* in actions of tort (*y*). In these cases the plaintiff is *primâ facie* entitled to no costs whatever; but if the judge certifies that there was sufficient reason for bringing the action in the high court, he may, in the cases not affected by the 21 Jac. 1 (*z*), and the 3 & 4 Vict. c. 24, s. 2 (*a*), obtain them. In the actions of tort affected by the latter statute, it will, on the assumption that its provisions still obtain, be necessary to have an additional certificate under that Act.

Beyond the power of the judge at the trial over the plaintiff's costs, in cases where he recovers sums not exceeding 20*l.* in contract or 10*l.* in tort, the Act of 1867

(*w*) 36 & 37 Vict. c. 66, s. 67.

(*z*) *Ibid.*

(*x*) *Ante*, p. 57.

(*a*) *Ante*, p. 58.

(*y*) 30 & 31 Vict. c. 142, s. 5.

empowers a judge at chambers, or the court, to grant them by rule or order. This power was exercisable quite irrespective of the refusal of the judge at the trial to grant his certificate; and, as was pointed out by more than one judge, an application at chambers or to the court for costs, where the judge had refused his certificate at the trial, was practically an appeal against the discretionary judgment of the judge (*b*). "The Judicature Act, 1873," in an earlier section than the one extending section 5 of "The County Courts Act, 1867" to actions in the high court, provides that no order by the high court, or any judge thereof, as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order (*c*). It is reasonable to suppose that this section will control appeals against orders as to costs under order lv. (*d*); but an important point of much greater doubtfulness arises, whether it does in fact limit the power to apply for a rule or order for costs when the judge has refused his *certificate*, under the Act of 1867, to those cases in which leave is granted by the judge.

The above points suggested by the new Judicature Acts are raised for the purpose of cautioning suitors as to difficulties which may arise. Strictly speaking, it is only with section 5 of the Act of 1867, as affecting actions in the high court, that the author is concerned. In the following pages, the practice and rules of law which obtained under the Act of 1867 will now be explained, and must be taken to be subject to the questions which may arise under the Judicature Acts. It is conceived that the only actions in the high court to which the sections of the Act of 1867 can apply are actions founded on contract or tort, in which damages are claimed, and in which relief might have been obtained in a county court.

*County Courts Act, 1867.* The provisions of section 5 apply to an action commenced in an inferior court, and removed by *certiorari*, on the application of the defendant, into the superior court. If the plaintiff recovers less than the statutory amount, he should obtain a rule or order for his costs, as the judge has no power to certify, and without a rule or order the plaintiff cannot have his costs (*e*). So

(*b*) See *per* Bramwell, B.,  
Hinde v. Sheppard, L. R. 7 Ex.  
24, *post*, p. 64.

(*c*) 36 & 37 Vict. c. 66, s. 49.

(*d*) *Ante*, p. 57.

(*e*) *Pellas v. Breslauer*, L. R. 6  
Q. B. 438; 40 L. J. Q. B. 161;  
19 W. R. 779; 24 L. T. N. S. 762.

the Act applies to an action commenced in a superior court in consequence of the defendant, under the provisions of the 19 & 20 Vict. c. 108, s. 39 (*f*), having, after plaint entered in a county court, ousted its jurisdiction by objecting to it in the prescribed manner (*g*). The Act also applies, though the debt be secured by bill of exchange or promissory note, whether the action be brought under the "Bills of Exchange Act, 1855," or not (*h*). The law as to recovering costs of issues of law, where the amount recovered at the trial is below the prescribed limit, would appear to be the same as formerly. Under it, if the plaintiff succeeded on a demurrer, but recovered at the trial, whether before or after the argument of the demurrer, less than the prescribed amount, he was not entitled either to the costs of demurrer or the costs of the cause without a certificate (*i*).

The meaning of "recover" appears to be the same under the present section as under the old Acts—*i.e.*, what is *obtained* in the suit. Consequently, where money is paid into court, it is recovered within the meaning of the Act; so, if the claim is for less than the statutory amount, and the defendant pays it into court, the plaintiff is not entitled to costs; whilst, if his claim exceeds the specified limit and the defendant pays money into court, and the plaintiff proceeds to trial and recovers a sum which, together with the amount paid in, exceeds the limit, the plaintiff is entitled to costs (*j*). But if the defendant pleads tender, and pays the amount tendered into court, then, if the plaintiff recovers beyond that amount a sum within the statutory limit, he is not (according to the old law) entitled to costs (*k*). Where a defendant pleaded non-joinder of co-defendants, and the plaintiff amended, but before amendment the defendant paid to the plaintiff all but 4*l.* 7*s.* 3*d.* of the amount afterwards found to be due, it was held that the plaintiff recovered only 4*l.* 7*s.* 3*d.* in the action, and was not entitled to costs without a certificate (*l*).

(*f*) *Post*, chap. iii., part 4.

(*g*) *Flitters v. Allfrey*, L. R. 10 C. P. 29; 44 L. J. C. P. 10, 73; 31 L. T. N. S. 878, 881.

(*h*) *Holborrow v. Jones*, L. R. 4 C. P. 14; 38 L. J. C. P. 22; 19 L. T. N. S. 320; 17 W. R. 54; 19 & 20 Vict. c. 108, s. 4.

(*i*) *Abley v. Dale* (2), 11 C. B. 889; 21 L. J. C. P. 104; *Dunstan v. Paterson*, 4 C. B. N. S. 479; 28 L. J. C. P. 185; and see *Flitters v. Allfrey*, *supra*.

(*j*) *Boulding v. Tyler*, 3 B. & S. 472; 32 L. J. Q. B. 85; *Parr v. Lillicrap*, 1 H. & C. 615; 32 L. J. Ex. 150; 11 W. R. 94; *Hewitt v. Cory*, L. R. 5 Q. B. 418; 39 L. J. Q. B. 279; 18 W. R. 954; 22 L. T. N. S. 666; and see *Baylis v. Linlott*, *post*, p. 67.

(*k*) *James v. Vane*, 2 E. & E. 883; 29 L. J. Q. B. 169.

(*l*) *Balmain v. Lickfold*, L. R. 10 C. P. 203; 44 L. J. C. P. 94.

*Certificate, and effect of it.* The Act requires that the judge shall certify on the record, but the Nisi Prius record being now abolished, it is conceived that the copy of the pleadings required by order xxxvi., rule 17, Jud. Act, will be a sufficient record. Under order xxxvi., rule 23, Jud. Act, it would appear that at Nisi Prius sittings the associate should make an entry of the grant of the certificate in a book to be kept by him.

When a cause is sent for trial under 19 & 20 Vict. c. 108, s. 26, the county court judge has power to certify. The issue is a sufficient record for the purpose (*m*). If the order of the judge sending the cause for trial is silent as to the scale of costs to be allowed, the master of the superior court, in taxing costs, may take the county court scale as his guide, so far as regards the proceedings in the county court (*n*). On a writ of inquiry as to damages, the under-sheriff has power to certify (*o*); but on the authority of the old decisions, which appear applicable, he cannot certify after the writ of trial has been returned (*p*). The same rule would appear to be applicable to county court judges, who (*supra*) have power to certify in causes under 19 & 20 Vict. c. 108, s. 26. Generally, the power to certify under the old Acts could have been exercised any time before taxation of costs; and, as the present Act does not limit the time, the old decisions appear to be applicable (*q*).

The certificate of the judge does not affect the scale of taxation; so where, in an action of contract (not being a case where "by reason of the nature of the action no writ of trial could be issued"), the judge certified that there was sufficient reason for bringing the action in the superior court, but did not certify on the *postea* that "the cause was proper to be tried before him," the court held that the master was right in taxing costs on the lower scale, under the seventh direction to masters, Hilary Term, 1853 (*r*).

As to the necessity for a certificate under the 3 & 4 Vict.

(*m*) *Taylor v. Cass*, L. R. 4 C. P. 614; 20 L. T. N. S. 667; 17 W. R. 860.

(*n*) *Wheatcroft v. Foster*, 1 E. B. & E. 737.

(*o*) *Craven v. Smith*, *ante*, p. 58.

(*p*) *Knapman v. Pryer*, 1 H. & N. 719; 26 L. J. Ex. 143.

(*q*) *Tharratt v. Trevor*, 6 Ex. 187; 20 L. J. Ex. 189; *Mason v. Tucker*, 4 H. & N. 536; *Bennett v. Thompson*, 6 E. & B. 683; 25 L. J. Q. B. 378.

(*r*) *Smith v. Haley*, L. R. 8 Ex. 16; 42 L. J. Ex. 5; 21 W. R. 76; 27 L. T. N. S. 426; and see *Wheatcroft v. Foster*, *supra*.



c. 24, s. 2, in actions to which it applies, where the amount recovered is less than 40*s.*, see *ante*, p. 58.

*Power of court or judge to allow costs.* If no application is made to the judge at Nisi Prius for the necessary certificates, or if he refuses them, the plaintiff may apply to a judge at chambers, or to a divisional court, for an order or a rule for his costs (*s*). And it would appear, from the decisions presently noticed, that the court or a judge at chambers is not fettered in actions to which the 3 & 4 Vict. c. 24, s. 2, applies, by the refusal to grant a certificate under that Act, any more than it is by his refusal to certify under the 30 & 31 Vict. c. 142, s. 5; although, where the action is for slanderous words, actionable in themselves, the court or judge cannot, by reason of the 21 Jac. 1, c. 16, s. 6, give the plaintiff more costs than damages (*t*).

The application to the court or judge is not considered to be an appeal from the judge at Nisi Prius who has refused his certificate, although, practically, in most cases it is so. It seems to be generally conceded that the power given to the court or judge at chambers is greater than that given to the judge at Nisi Prius (*u*). The judge at the trial is empowered to certify, under the Act of 1867, on a single point—namely, whether there was sufficient reason for bringing the action in the superior court; and in arriving at that conclusion he is justified in being governed by the fact that in his opinion the action ought not to have been brought at all (*v*); but the court or a judge at chambers may take other matters into their consideration. It seems also to be conceded that new matter, not brought before the judge at Nisi Prius, showing that there was sufficient reason for bringing the action in the superior court, may entitle the plaintiff to a rule or order for his costs, though the judge at the trial has refused to certify (*w*). But the simple point whether, without the introduction of new matter, the court will reverse the decision of the judge at the trial, is not quite so clear. In a case decided under the 15 & 16

(*s*) See the remarks on this point, *ante*, p. 60. The order cannot be made by a master or district registrar, Jud. Act, order liv., rule 2; order xxxv., rule 4.

(*t*) *Marshall v. Martin*, *ante*, p. 58.

(*u*) See, however, the judgment in *Marshall v. Martin*, *ante*, p. 58.

(*v*) *Strachey v. Lord Osborne*, L. R. 10 C. P. 92; 44 L. J. C. P. 6; 31 L. T. N. S. 374.

(*w*) See the judgments of Hayes, J., *Gray v. West*, of Hannen, J., *Sampson v. Mackay*, *ante*, p. 58, and the judgments in *Barlow v. Briggs*, 27 L. T. N. S. 159; 20 W. R. 866.

Vict. c. 54, s. 4, it was held that where a judge had refused to certify the court would not, on the same facts, interfere with the opinion of the judge by giving the plaintiff his costs; and that, to induce the court to interfere, it must appear that the facts relied on were not disclosed before the judge at the trial, or that the judge had adopted some erroneous view, in point of law, affecting his decision (*x*). This decision is approved in *Hinde v. Sheppard* (*y*); but in that case, Willes, J., having refused a certificate, the Court of Exchequer granted the plaintiff his costs, no new matter being introduced before the court. The action was brought to try a right alleged to exist in the inhabitants of Flimby to play games over a large piece of land, including the plaintiff's. In giving judgment, Bramwell, B., says: "This is not, in form, an appeal against the judgment of my brother Willes, but it is so in substance. The question is, whether there was sufficient cause for bringing this action in a superior court, and I think it impossible to say there was not sufficient cause. But where that is so, there is no discretion in the judge to certify; he ought to certify. . . I do not wish to recall anything that I said in *Hatch v. Lewis* (*x*). That was an action brought only to recover damages, and in such cases it is for the judge at Nisi Prius to decide as to the propriety of certifying for costs. But here a right is in question, which would have little or no bearing on the amount of damages" (*z*). Practically, the court in the last case interfered with the opinion of the judge at Nisi Prius, apparently on the ground that the action was brought to try a right, and that the judge ought to have certified at the trial. A similar opinion appears to have formed the basis of the judgment of Kelly, C.B. (dissenting from the rest of the court) in *Barlow v. Briggs* (*a*). That was a case brought to try rights of trifling value, and Lush, J., having refused his certificate, the Court of Exchequer refused the plaintiff his costs. The judgments of Kelly, C.B., and Bramwell, B., seem to show that the court has power in all cases to interfere with the judge's opinion formed at the trial, and grant the costs, although, unless some new matter be introduced, it will not do so except on

(*x*) *Hatch v. Lewis*, 7 H. & N. 367; 31 L. J. Ex. 26.

(*y*) L. R. 7 Ex. 21; 41 L. J. Ex. 25; 25 L. T. N. S. 500.

(*z*) L. R. 7 Ex. 24.

(*a*) 20 W. R. 866; 27 L. T. N. S. 159. See, too, *Strachey v. Lord*

*Osborne*, *ante*, p. 63, where the verdict being for 50s. in an action for trespass to land, the Court of Common Pleas refused a rule for costs, the judge having refused to certify.

strong grounds (*b*); but Martin and Channell, BB., held that the power of the court was confined to cases in which new matter not brought before the judge at *Nisi Prius*, was brought before it. "An independent power of giving the plaintiff his costs is conferred on the court and on a judge at chambers in respect of matter which is new, or where the judge has not been applied to at the trial at all" (*c*). Taking all the cases together, it is submitted that, when the judge at the trial has clearly made a mistake in forming his opinion, the court will grant the plaintiff his costs, even upon the same facts brought forward at *Nisi Prius*, but that the case must be a very strong one (*d*).

After an order made under 30 & 31 Vict. c. 142, s. 10 (*post*, chap. x.), sending an action of tort for trial to a county court, the superior court has no jurisdiction over the costs, and cannot make an order to tax (*e*).

When a cause is referred to an arbitrator, and he awards less than the statutory amount, the court has power to grant the plaintiff his costs (*f*). In this case the arbitrator had power to certify; and although he had expressed an opinion that the plaintiff ought to have his costs, he had not certified in the proper manner. There seems to be no reason, however, why the court should not have power to grant the costs, even if an arbitrator has no power to certify.

*Grounds for allowance of costs (g).* The distance at

(*b*) See, too, *per* Hannen, J., in *Sampson v. Mackay*, L. R. 4 Q. B. 648: "Another case where the section applies is, where the court thinks that the judge at the trial has not exercised his discretion properly." And *per* Hayes, J., *Gray v. West*, L. R. 4 Q. B. 178.

(*c*) *Per* Channell, B., *Barlow v. Briggs*, 20 W. R. 866.

(*d*) See *Flitters v. Allfrey*, *ante*, p. 61, and *Strachey v. Lord Osborne*, *ante*, p. 63.

(*e*) *Moody v. Steward*, L. R. 6 Ex. 35; 40 L. J. Ex. 25; 23 L. T. N. S. 465; 19 W. R. 161.

(*f*) *Harland v. Mayor of Newcastle*, L. R. 5 Q. B. 47; 39 L. J. Q. B. 67.

(*g*) Before the limiting of the application of the section to cases

in which the relief sought would have been obtained in a county court, several cases came before the courts in which the county courts had no concurrent jurisdiction. As explanatory of the section, these decisions are now useless; but they may still be useful for reference, either at *Nisi Prius* or in the court above, when any question is raised as to the granting or withholding of costs. It has been held that the fact that an action cannot be commenced in a county court is a ground for the allowance of costs which the court will consider, but is not in itself conclusive. In an action for slander the plaintiff recovered 10*l.*, and the court allowed him his costs (*Gray v. West*, *ante*, p. 58); and in a similar action, in which

which the plaintiff resides from the defendant is not a ground for the allowance of costs (*h*); neither (under the old Acts) was ignorance that a cause of action was within the county court jurisdiction (*i*); nor (under the Act of 1867) that the plaintiff was misled by the registrar of the county court as to its jurisdiction; nor that the expense and delay of the proceedings in the county court would have greatly exceeded those in the superior court (*j*).

Where an action was brought to try a right alleged to exist in the inhabitants of Flimby to play games over a large piece of land, including the plaintiff's, the court granted the plaintiff his costs (*k*); but in an action to assert rights of trifling value, the court refused the costs (*l*). In both of these cases the judges at *Nisi Prius* had refused to certify.

The fact of a defendant obtaining the removal of a cause by *certiorari* into the superior court may be a strong ground for allowing costs (*m*); and it is conceived that where a plaintiff has been compelled to bring his action in the superior court through the defendant objecting to the jurisdiction of the county court, under 19 & 20 Vict. c. 108, s. 39, that fact would in general be considered in the plaintiff's favour; although, in the case referred to, the court, believing in the *malæ fides* of the plaintiff, refused him his costs, though in an action of tort he had recovered 5*l.* (*n*).

5*l.* was recovered, the court granted costs, observing that the plaintiff had recovered an amount sufficient, in the absence of evidence to the contrary, to warrant the inference that his conduct in bringing the action was neither frivolous nor vexatious (*Craven v. Smith, ante, p. 58*). But where a plaintiff recovered 3*l.* on a count for slander, and a farthing on a count for trespass, Mellor, J., having refused to certify, and being dissatisfied with the verdict, the court refused costs (*Sampson v. Mackay, ante, p. 58*). So in an action for libel contained in a report in a newspaper of a case before magistrates, in which the plaintiff, a barmaid, had been charged with robbing her master, the charge being dismissed, the court refused costs on the ground

that actions of that kind ought not to be encouraged, and that it was not of such a nature as to warrant its being tried in a superior court (*Street v. Licensed Victuallers' Association, Ex. "Times," June 6, 1874*).

(*h*) *Thompson v. Dallas*, L. R. 3 Q. B. 358; 37 L. J. Q. B. 133; 16 W. R. 703; 18 L. T. N. S. 288.

(*i*) *Huth v. Long*, 1 L. M. & P. 333; 19 L. J. Q. B. 325.

(*j*) *Holborrow v. Jones*, L. R. 4 C. P. 14; 38 L. J. C. P. 22; 19 L. T. N. S. 320; 17 W. R. 54.

(*k*) *Hinde v. Sheppard, ante, p. 64*.

(*l*) *Barlow v. Briggs, ante, p. 63*.

(*m*) *Pellas v. Breslauer, per Blackburn, J.*, L. R. 6 Q. B. 440.

(*n*) *Flitters v. Alfrey, ante, p. 61*.

*The form of action.* The amount to be recovered by a plaintiff to entitle him to his costs as of right differs according as the action is founded on tort or on contract. It becomes of importance to know, therefore, what construction has been placed by the courts upon the words "if the action is founded." In many cases a cause of action may be stated by the pleader either as a breach of duty or of contract; and, whilst some of the cases under the old law went upon the principle that the court would look to the substance of the case, and see whether the action could have been maintained without any contract, and, irrespective of the form of the declaration, grant or withhold costs (*o*), others seem to have been decided more according to the form than the substance of the action (*p*).

In Mr. Bullen's work upon Pleading (*q*), it is stated that under the Act of 1867 the determination of the question of the right to costs "will not be affected by the mere form of the declaration, that Act having avoided any distinction founded on the technical forms of action which had been adopted in the previous Act; and the test now is whether the cause of action is, in substance, founded on contract or on a tort, that is to say, on a wrong independent of contract" (*r*). In a recent case (*s*), Bovill, C.J., cites this passage with approval; and, though the court did not find it necessary expressly to dissent from the old cases which conflict with Mr. Bullen's proposition, the tone of the judgments seems unfavourable to them. The declaration was, in the case under consideration, framed in contract for loss of luggage by a cab proprietor, and the court held the action to be founded on contract and refused a rule for costs. "Here," said Bovill, C.J., "the contract alleged in the declaration would be implied by law on the hire of the carriage, and the cause of action is therefore rightly put as founded on the contract" (*t*). "Where no contract, properly so called, is made at all or would be implied, as where a carrier wholly refuses to receive goods, the declaration can only be framed in tort, and it is conceived that the action must, for all purposes, be treated as founded on a wrong" (*q*).

(*o*) See *Leyge v. Tucker*, 1 H. & N. 500; 26 L. J. Ex. 71.

(*p*) See *Tattan v. Great Western Railway Co.*, 2 E. & E. 844; 29 L. J. Q. B. 184.

(*q*) 3rd edit., p. 121.

(*r*) This definition of a tort is in accordance with the Com-

mon Law Procedure Act, 1852.

(*s*) *Baylis v. Linlott*, L. R. 8 C. P. 345; 42 L. J. C. P. 119; 28 L. T. N. S. 666, in which *Tattan v. Great Western Railway Co.*, *supra*, is disapproved.

(*t*) L. R. 8 C. P. 347.

Detinue would appear to be an action founded on tort for the purposes of this section (*u*). It is probable that where a plaintiff claimed the return of the chattel and damages for the detention, and recovered no more than 5*l.* damages, the court would look at the value of the chattel in deciding upon a rule for costs.

*Under references and awards.* Where a reference is ordered at Nisi Prius, the arbitrator has no power to give the plaintiff the costs of the cause if the amount awarded is within the statutory limit, unless he has power to certify and certifies (*v*); the court or a judge may, however, if the arbitrator omits to certify, either grant the costs or refer the matter back to the arbitrator to certify or not as he thinks fit (*w*). If the reference is by consent, and the costs of the reference and award are in the discretion of the arbitrator, he has power to give the plaintiff the costs of the reference and award, although he may award a sum within the statutory limit (*x*); but if the reference is compulsory under the Common Law Procedure Act, 1854, s. 3, although the order of reference provides that the costs of the cause shall abide the event, and the costs of the reference be in the discretion of the master, the master cannot give the plaintiff the costs of the reference and award, as they are in substance, in such a case, costs in the cause (*y*).

Where the declaration contained counts in trover and debt, and the arbitrator awarded 2*l.* 10*s.* on the one and 7*l.* 12*s.* 8*d.* on the other, it was held that the Act deprived the plaintiff of the costs of the cause (*z*). But where a cause and all matters in difference were referred, and the arbitrator found 259*l.* 1*s.* to be due to the plaintiff in the action, and 243*l.* 13*s.* 10*d.* to the defendant for other matters in difference, and directed that the latter should be set off against the damages and costs recoverable in the action, it was held that the plaintiff was entitled to the costs of the cause (*z*).

*Points of practice.* The court has at all times power to

(*u*) *Danby v. Lamb*, 11 C. B. N. S. 423; 31 L. J. C. P. 17; *Byrne v. McEvoy*, Ir. Rep. 5 C. L. 568.

(*v*) *Cowell v. American Colliery Co.*, 6 B. & S. 333; 34 L. J. Q. B. 161; *Forshaw v. De Wette*, L. R. 6 Ex. 200; 40 L. J. Ex. 153; 19 W. R. 777; 24 L. T. N. S. 397.

(*w*) *Harland v. Mayor of New-*

*castle*, L. R. 5 Q. B. 47; 39 L. J. Q. B. 67.

(*x*) *Forshaw v. De Wette*, *ubi sup.*

(*y*) *Moore v. Watson*, L. R. 2 C. P. 314; 15 L. T. N. S. 662; 36 L. J. C. P. 122.

(*z*) *Stevens v. Chapman*, L. R. 6 Ex. 213; 40 L. J. Ex. 123; 24 L. T. N. S. 478.

look at its own records and to take notice of their contents, although they may not be formally brought before the court by affidavit; so, where the affidavit, on which the rule for costs was moved, was silent as to the nature of the cause of action, the court held that they could refer to the pleadings as they appeared on the record (*a*).

Applications to review the decisions of a judge at chambers by way of appeal must be made at the next sittings after the decision has been made (*b*).

*Actions brought in inferior courts.* Where any action or suit shall be brought in any other court than the superior courts of law which could have been brought in a county court, and the verdict recovered is for a less sum than 10*l.*, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action or suit had been brought in such county court, unless the judge shall certify that the action or suit was a fit one to be brought in such other court (*c*).

## PART V. PROHIBITION.

The writ of prohibition, which issued out of a superior court at Westminster, was an old common law remedy for restraining inferior tribunals from usurping a jurisdiction not possessed by them, or exceeding a jurisdiction possessed by them. The writ was granted *ex debito justitiæ*, yet the courts exercised a legal though not an arbitrary discretion in granting or withholding it (*d*). The object of the writ being to keep the court to which it was directed within its proper jurisdiction, it lay to any county court which, without jurisdiction over a particular cause, entertained it, or, having a certain jurisdiction, went beyond it. The writ might be directed either to the judge, or to a party to the suit, or to both conjointly; and it might require a suspension of the proceedings either conditionally or peremptorily (*e*).

(*a*) *Craven v. Smith*, ante, p. 58.

(*b*) *Meredith v. Gittens*, 18 Q. B. 257; 21 L. J. Q. B. 273; *Orchard v. Mowey*, 2 E. & B. 206.

(*c*) 30 & 31 Vict. c. 142, s. 29.

(*d*) Bac. Abr., Prohibition, B; Com. Dig., Prohibition, C; and see *per* Parke, B., *Knowles v. Holden*, 24 L. J. Ex. 224: "A prohibition is not a discretionary

proceeding." See, too, *per* Willes, J., *Mayor of London v. Com.*, L. R. 2 H. L. 239, 278; S. C., 36 L. J. Ex. 225; 16 W. R. 44, where the law of prohibition is fully considered; and *Worthington v. Jeffries*, L. R. 10 C. P. 379; 44 L. J. C. P. 209.

(*e*) See Bac. Abr. and Com. Dig., Prohibition.



It might require an entire suspension of proceedings, or it might go *quoad* the part of the suit over which the court had no jurisdiction (*f*). So where the cause of action of part of a claim arose within the jurisdiction of a court, and of another part without the jurisdiction, the writ was allowed to go *quoad* the part arising out of the jurisdiction (*g*). The writ also issued out of the Court of Chancery, but application there was not usually made except under special circumstances (*h*). It is conceived that since the Judicature Acts, the writ will issue out of any division of the high court, and that the principles which governed its issue are in no way altered. It was, however, never the practice to restrain equity proceedings by prohibition, and the question now arises whether, since the consolidation of the superior courts of law and equity, the writ of prohibition will issue to restrain any proceeding, not within its jurisdiction, brought in a county court by virtue of the Act conferring an equity jurisdiction upon the county courts.

*When granted.* The jurisdiction in common law actions, and under special statutes, possessed by the county courts, has been explained in the foregoing pages; and if any case is brought in a county court which it has no jurisdiction to try, or if it exceeds its jurisdiction, a writ of prohibition may be applied for and obtained in the high court. Hence, if a plaint be entered for more than 50*l.* in any action of contract or tort; or claiming damages for breach of promise of marriage, or for libel, slander, malicious prosecution, or seduction (*i*), or under "The Bills of Exchange Act," for less than 10*l.* or more than 50*l.*; or if, in an action of ejectment, the yearly rent or value of the premises sought to be recovered exceeds 20*l.*; or if, in proceedings for the recovery of small tenements, the yearly rent or value of the premises exceeds 50*l.*; or if, in any action, the title to any corporeal or incorporeal hereditaments shall come in question, and the value of the lands, tenements, and hereditaments in dispute, or the rent payable in respect thereof, exceeds 20*l.* by the year, or in case of an easement or license if the value or reserved rent of the lands, tenements,

(*f*) Com. Dig., Prohibition; *Free v. Burgoyne*, 5 B. & C. 400; 4 L. J. K. B. 266.

(*g*) *Walsh v. Ionides*, 22 L. J. Q. B. 137.

(*h*) *Anon.*, 1 P. Wms. 476;

*Wright v. Cattell*, 19 L. J. Ch. 527; *Jacobs v. Brett*, L. R. 20 Eq. 1; 44 L. J. Ch. 377.

(*i*) Not, however, if the cause be sent for trial by the high court. See *post*, chap. x.

or hereditaments in respect of which the easement or license is claimed, or on, through, over, or under which such easement or license is claimed, exceeds 20*l.* by the year; or if, in any action, the title to any toll, fair, market, or franchise (*j*) shall come in question; or if, in any action, the validity of any devise, bequest, or limitation under any will or settlement is disputed; or if a plaint be entered, under the common law jurisdiction, claiming more than 50*l.*, for the whole or part of the unliquidated balance of a partnership account, or for a distributive share of personal estate under an intestacy, or of any legacy under a will; or if, in any of the special subjects of jurisdiction already noticed (*k*), the court exceeds the jurisdiction which is given to it; unless the defendant has consented before plaint entered, or consents at the hearing of the case, to give the court jurisdiction (*l*), or by neglect or waiver, as hereafter mentioned, has lost his right to obtain it, the writ of prohibition will lie. If the writ should also be held applicable to proceedings commenced by virtue of the Act conferring an equity jurisdiction on the county courts, the cases under that Act must also be added to the above (*m*).

To induce the court to grant the writ, there must be an actual assumption of a jurisdiction not possessed by the court, or an excess of the jurisdiction which it possesses. So if a judge, without hearing evidence (*n*), or after going into evidence, if he acts on a wrong assumption as to a point of law going to jurisdiction (*o*), decides that he has jurisdiction, and it is afterwards discovered that he had no jurisdiction, a prohibition will lie. But if he merely decides upon disputed facts, though going to jurisdiction, the court will not generally interfere (*p*). There are, however, some cases in which the decision of the judge on a fact the wrong decision of which gives him jurisdiction,

(*j*) See remarks, chap. xiii, part 2.

(*k*) *E.g.*, the Friendly Societies Acts. See *Hull v. M'Farlane*, *Smith v. Pryse*, *ante*, p. 45.

(*l*) See *ante*, p. 17.

(*m*) See *ante*, p. 2.

(*n*) *Per* Cockburn, C.J., *Brown v. Cocking*, L. R. 3 Q. B. 675.

(*o*) *Elston v. Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; 16 W. R. 933; 18 L. T. N. S. 560; *Lilley v. Harvey*, 17 L. J. Q. B.

357; *Thompson v. Ingham*, 14 Q. B. 710; 19 L. J. Q. B. 189; *Crowley v. Vitty*, 7 Ex. 319; 21 L. J. Ex. 135.

(*p*) *Brown v. Cocking*, L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; 16 W. R. 933; 18 L. T. N. S. 560; *Joseph v. Henry*, 1 L. M. & P. 388; 19 L. J. Q. B. 369; and see *Kimpton v. Willey*, 1 L. M. & P. 280; 9 C. B. 719; 19 L. J. C. P. 268.

may be reviewed by prohibition (*q*). Such cases do not appear to have arisen under the County Courts' Acts. The distinction between the two classes of cases going to jurisdiction is thus explained by Cockburn, C.J.: "If there has been a real conflict of testimony upon some fact which goes to the question of jurisdiction, the court will not interfere except on very strong grounds. The judge has then really exercised his discretion; but where he has given himself jurisdiction by coming to an erroneous conclusion upon a point of law, the case is very different, and he is in fact without jurisdiction, and has no authority to entertain the question" (*r*). So, where a lessee for years, with a rent reserved, brought ejectment, and the annual value of the premises to let to an occupying tenant exceeded 20*l.*, but the value of the plaintiff's interest, after deducting the rent paid by him, was less than 20*l.* a year, and the judge decided that the yearly value did not exceed 20*l.*, and that he had, therefore, jurisdiction, the court held that the value of the tenements meant the marketable value, and not the value of the plaintiff's interest, and that the judge had assumed jurisdiction, not by deciding upon conflicting facts, but on a wrong assumption as to a point of law, and so ordered that the writ should go (*s*). "I think," said Blackburn, J., "that the judge was wrong in the conclusion at which he arrived, because he applied a wrong rule of law to the facts" (*t*). So, where the judge wrongly decided on the facts that title to land was not in question, a prohibition was allowed to go (*u*). And where, in interpleader proceedings, the particulars of the claimant were wrongfully held to be insufficient by the judge, and he refused to hear the claim, a prohibition was issued (*v*).

Where a judge held that he had jurisdiction to hear a claim, the particulars of which showed a claim substantially for a malicious prosecution, though in terms charging an assault (*w*), and where he amended the particulars of the plaintiff's claim for a malicious prosecution to one for false imprisonment (*x*), and where, of his own motion, he amended the plaint and reduced a claim originally in excess

(*q*) *Liverpool Gas Co. v. Everton*, L. R. 6 C. P. 414; 40 L. J. M. C. 104; 24 L. T. N. S. 361; 19 W. R. 412.

(*r*) *Elston v. Rose*, L. R. 4 Q. B. 7.

(*s*) *Ibid.*, ante, p. 71.

(*t*) *Ibid.*, L. R. 4 Q. B. 8.

(*u*) *Thompson v. Ingham*, 14 Q. B. 710; 19 L. J. Q. B. 189.

(*v*) *Hardy v. Walker, Ex parte M'Fee*, 9 Ex. 261; 23 L. J. Ex. 57.

(*w*) *Jones v. Currey*, 2 L. M. & P. 474; 20 L. J. Q. B. 438.

(*x*) *Hopper v. Warburton*, 32 L. J. Q. B. 104; 11 W. R. 384; 7 L. T. N. S. 722.

of the jurisdiction to 50*l.* (*y*), prohibitions issued. So it will lie to prevent a person from splitting his demand and bringing several actions contrary to the provisions already noticed (*ante*, p. 20) (*z*); so also to stay proceedings on a plaint entered without leave of the judge or registrar, in a case where leave is required (*a*); and to restrain execution on an order for payment of costs where the court has no jurisdiction to award them (*b*). It will lie to prevent a judge from hearing a cause in which he is interested (*c*), so also if he attempts to alter or rescind a judgment after it has been once pronounced (*d*); and the same rule obtains upon an application for a new trial (*e*). It will lie to prevent the judge from proceeding with a citation to appear to answer a contempt committed out of court (*f*), and to stay proceedings on an order for commitment, where an order has been already obtained for the same debt, and is still in force (*g*). So if a judge exceeds his jurisdiction under the Friendly Societies Acts, a prohibition will lie (*h*).

*When not granted.* No prohibition will be granted because a judge improperly receives evidence (*i*), nor because he wrongly decides a point of law, not going to jurisdiction (*j*), however erroneously (*k*), nor because he wrongly decides upon the facts, or upon questions of mixed law and fact, so long as the question of law does not go to jurisdiction (*l*). Most of these cases may afford a good

(*y*) *In re Hill, Hill v. Swift*, 10 Ex. 726; 24 L. J. Ex. 137.

(*z*) *Grimbley v. Ackroyd*, 1 Ex. 407; 17 L. J. Ex. 157.

(*a*) *Brown v. London and North Western Railway Co.*, 4 B. & S. 326; 32 L. J. Q. B. 318; 11 W. R. 884.

(*b*) *Lawford v. Partridge*, 1 H. & N. 621; 26 L. J. Ex. 147.

(*c*) *Ex parte Medwin*, 1 E. & B. 609.

(*d*) *Jones v. Jones*, 5 D. & L. 628, 632, *per Coleridge, J.*; *Irving v. Askew* (2), L. R. 5 Q. B. 208; 39 L. J. Q. B. 118.

(*e*) *Great Northern Railway Co. v. Mossop*, 17 C. B. 130; 25 L. J. C. P. 22.

(*f*) *Reg. v. Lefroy*, L. R. 8 Q. B. 134; 28 L. T. N. S. 132; S. C., *nom. Ex parte Jolliffe*, 42 L. J. Q. B. 121; 21 W. R. 332.

(*g*) *Horsnail v. Bruce*, L. R. 8 C. P. 378; 42 L. J. C. P. 140; 21 W. R. 597; 28 L. T. N. S. 705.

(*h*) *Hull v. M'Farlane*, 2 C. B. N. S. 796; 27 L. J. C. P. 41; *Smith v. Pryse*, 7 El. & Bl. 339; 26 L. J. Q. B. 95; 5 W. R. 295.

(*i*) *Winsor v. Dunford*, 12 Q. B. 603; 18 L. J. Q. B. 14.

(*j*) *Ex parte Rayner*, 5 C. B. 162; 17 L. J. C. P. 16.

(*k*) *Norris v. Carrington*, 16 C. B. N. S. 396.

(*l*) *Still v. Booth*, 1 L. M. & P. 440; 19 L. J. Q. B. 521; *In re Bowen*, 15 Jur. 1196; 21 L. J. Q. B. 10; *Lixden and Munster Union v. Southgate*, 10 Ex. 201; 23 L. J. Ex. 316; *Chivers v. Savage*, 5 E. & B. 697; 25 L. J. Q. B. 85; *Ex parte Rayner*, *supra*; *Brown v. Cocking*, L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; 16 W. R. 933; 18 L. T. N. S. 560; *Joseph v. Henry*, 1 L. M. & P. 388; 19 L. J. Q. B. 369.

ground of appeal; but, as the error of the judge is one committed in the exercise of his *actual* powers, and not of *assumed* powers only, it is not a case for a prohibition. "An inferior tribunal cannot give itself jurisdiction by deciding without evidence; on the other hand, it cannot refuse to go into evidence in order to ascertain whether it has or has not jurisdiction; and if it takes upon itself jurisdiction without evidence, or after refusing to go into evidence, and it turns out there was no jurisdiction, this court cannot look to see whether the decision was on the balance of evidence right or not. We are bound by his decision" (*m*). So where, notwithstanding an admission by the plaintiff that a plea of judgment recovered in another court for the same debt was true, the judge gave judgment for the plaintiff, the court held that the question before him was within his jurisdiction, and refused the writ (*n*). So where an insolvent pleaded his discharge to a judgment-summons, and the judge, notwithstanding, made an order for payment by instalments, and afterwards committed him, it was held to be, at most, an error on the part of the judge, and not an excess of jurisdiction (*o*). And where a defendant was sued in the double capacity of executor and administrator, and he objected that the plaintiff ought to elect in which capacity he would proceed against him, and the judge overruled the objection, the court, assuming the objection to be right, refused a prohibition (*p*). So where, in an action of ejectment, the judge decided on conflicting evidence that the yearly value of the premises did not exceed 20*l.*, the court refused to interfere by prohibition, though there was strong evidence that the yearly value did exceed 20*l.* (*q*). And where a defendant did not appear, and the judge held that service of the summons had been duly made, and gave judgment against the defendant in his absence, and it was afterwards discovered that service had been wrongly made, the court refused a prohibition, holding that the decision as to the service was one of fact within the judge's jurisdiction under the statute (*r*).

Where a summons was issued incorrectly against the defendant as executor of A. B., instead of executor of C. D., the plaint having been entered correctly, and the judge, on

(*m*) *Per* Cockburn, C.J., *Brown v. Cocking*, L. R. 3 Q. B. 675.

(*n*) *Ex parte Rayner*, *supra*.

(*o*) *Still v. Booth*, *supra*.

(*p*) *Lirden and Munster Union v. Southgate*, *supra*.

(*q*) *Brown v. Cocking*, *supra*.

(*r*) *Robinson v. Lenaghan*, 17 L. J. Ex. 174. See also *In re Zohrab v. Smith*, 17 L. J. Q. B. 174. Compare *Liverpool Gas Co. v. Everton*, *ante*, p. 72.

its being represented that the Statute of Limitations would bar the claim if a new summons were issued, ordered a new summons to issue, bearing the date and number of the first, the court declined to interfere (*s*). The writ was not allowed to go, because, under process of the court, to levy a sum within its jurisdiction, the officer seized property to a greater amount (*t*); nor because in an action for false imprisonment the judge used expressions, in giving judgment, showing that he took into consideration, in giving damages, matters the subject of an action for malicious prosecution (*u*). And the court refused a prohibition to stay proceedings on a plaint for part of the same cause of action as a former plaint entered by the plaintiff, and removed into a superior court, the plaintiff undertaking not to proceed with the first suit (*v*).

*By whom applied for.* The writ is usually applied for by the party interested in obtaining the prohibition; but any person not a party to the suit may apply for and obtain a prohibition in the cases where it lies (*w*).

*At what stage of the suit to be applied for.* In whatever stage of the suit the defect of jurisdiction is made manifest to the court, it is bound to interfere by prohibition (*x*). If the plaintiff by his particulars so far discloses the nature of his claim as to show that it is one over which the court has no jurisdiction, the defendant may apply for and obtain a prohibition before the hearing. So, where the particulars showed a claim for damage to plaintiff's reversionary interest in land, a prohibition was granted, on the defendant showing that the title to land was *bonâ fide* in dispute (*y*). This case was decided before the Act of 1867, giving a limited jurisdiction in such cases. *Quære*, whether the court would now grant the writ until, in such case, supposing him to go wrong on a point of law, the judge decided whether or not the yearly rent or value exceeded 20*l*. And where the particulars disclosed a cause of action

(*s*) *Foster v. Temple*, 5 D. & L. 655; 17 L. J. Q. B. 230.

(*t*) *Ex parte Summers*, 2 C. L. R. 1284; 18 Jur. 522.

(*u*) *Chivers v. Savage*, 5 E. & B. 697; 25 L. J. Q. B. 85.

(*v*) *Edwards v. Rogers*, 1 L. M. & P. 196; 19 L. J. Ex. 149.

(*w*) *Mayor of London v. Cox*, per Willes, J., L. R. 2 H. L. 280; *In re Forster*, 4 B. & S. 187; *Baker*

*v. Clark*, L. R. 8 C. P. 121; *Robinson v. Emanuel*, L. R. 9 C. P. 414; 43 L. J. C. P. 244; 30 L. T. N. S. 500.

(*x*) *Burder v. Veley*, 12 Ad. & El. 263; and per Willes, J., *Mayor of London v. Cox*, L. R. 2 H. L. 239, 279.

(*y*) *Sewell v. Jones*, 1 L. M. & P. 525; 19 L. J. Q. B. 372.

which was clearly for a malicious prosecution, the writ was granted (*z*).

A prohibition may be obtained after hearing and judgment. By the common law, a prohibition would not lie after sentence for an excess of jurisdiction not appearing upon the face of the proceedings (*a*); and some doubt was at first entertained whether, as there were no proceedings in county courts on which an excess of jurisdiction could appear, a prohibition could issue after judgment (*b*). It seems, however, to be now settled that it can (*c*). In the case last cited, it is suggested, in the judgment of Pollock, C.B., that the objection to the jurisdiction raised by the defendant at the hearing "puts the matter quite upon the same footing as if the objection had appeared upon the face of the proceedings" (*d*). And if this be the only ground, there can be no prohibition after judgment, unless the point be made at the hearing, as there are no proceedings upon which the excess of jurisdiction can appear (*e*). Upon this point Mr. Justice Willes makes the following remarks, in his celebrated opinion delivered in the House of Lords, in *Mayor of London v. Cox* (*f*): "Where, however, the defect is not apparent, and depends upon some fact in the knowledge of the applicant, which he had an opportunity of bringing forward in the court below, and he has thought proper without excuse to allow that court to proceed to judgment without setting up the objection, and without moving for a prohibition in the first instance, although it should seem that the jurisdiction to grant a prohibition in respect of the right of the Crown is not taken away—for mere acquiescence does not give jurisdiction (*Knowles v. Holden*) (*g*)—yet, considering the conduct of the applicant, the importance of making an end of litigation, and that the writ, though of right, is not of

(*z*) *Hunt v. North Stafford Railway Co.*, ante, p. 16.

(*a*) Com. Dig., "Prohibition," Roll. Abr. See *Hart v. Marsh*, 5 Ad. & El. 591.

(*b*) See *Pears v. Wilson*, 2 L. M. & P. 515; 6 Ex. 833; *Denton v. Marshall*, 32 L. J. Ex. 89.

(*c*) *Marsden v. Wardle*, 3 E. & B. 695; 23 L. J. Q. B. 263; *Thompson v. Ingham*, 14 Q. B. 710; 19 L. J. Q. B. 189; *Denton v. Marshall*, supra; and see per

Willes, J., *Mayor of London v. Cox*, infra.

(*d*) 32 L. J. Ex. 92. See *Flitters v. Alfrey*, L. R. 10 C. P. 29; 44 L. J. C. P. 10, 73; 31 L. T. N. S. 878, 881, where the effect of a record of a county court judgment is considered.

(*e*) See *Yates v. Palmer*, 6 D. & L. 283.

(*f*) L. R. 2 H. L. 239, 283; S. C., 36 L. J. Ex. 225; 16 W. R. 44.

(*g*) 22 L. J. Ex. 223.



course, the court would decline to interfere, except, perhaps, upon an irresistible case, and an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of the applicant. (See *Case of the Admiralty*) " (h).

The writ may issue after execution has issued, and a levy has been made, if no sale has taken place (i); but if execution has been completed by seizure and sale, and the money paid out of court, the writ cannot go, for there is nothing to prohibit, and the applicant loses the writ by his own laches (j). The case of *Jones v. Owen* (k) is somewhat opposed in principle to these cases, but it has not been considered to be entirely satisfactory (l). In the case under consideration, the court ordered the restitution of certain property of which possession had been recovered under colour of the proceedings for the recovery of tenements. The rule *nisi* had been obtained the day before, and served the day after, the execution of the warrant of possession; and, as the judge of the county court had, on learning that a prohibition was to be applied for, ordered the warrant of possession to issue in seven days, instead of a month, as originally ordered, it is not unlikely that the decision was rather to meet the peculiar circumstances than in accordance with any fixed principle. A nice distinction between the cases of *Denton v. Marshall* and *Jones v. Owen* is drawn by Martin and Wilde, BB., in the former case (m)—viz., that in *Denton v. Marshall* a summons to show cause had been obtained, which had no effect until it was returnable, and did not necessarily operate as a stay of proceedings; whilst in *Jones v. Owen* a rule *nisi* had been obtained.

It would appear, therefore, that so long as the money remains in court under the control of its officers, a prohibition may be obtained, but that after it has been paid out it cannot. The defendant has then his remedy by action: "If there has been any compulsory levy of this money, the party may still have a remedy by action of trespass. If there is no jurisdiction in the county court, the act of compelling to pay the money would be a trespass, and an action

(h) 12 Co. Rep. 77.

(i) *Marsden v. Wardle*, *supra*; and see *per Williams, J., Kimpton v. Willey*, 1 L. M. & P. 280; 19 L. J. C. P. 269; Com. Dig., Prohibition.

(j) *Denton v. Marshall*, 32 L. J.

Ex. 89; *Robinson v. Lenaghan*, 2 Ex. 333; 17 L. J. Ex. 174.

(k) 5 D. & L. 669; 18 L. J. Q. B. 8.

(l) See *per Martin, B., Denton v. Marshall*, 32 L. J. Q. B. 93.

(m) 32 L. J. Q. B. 92.

would be maintainable against the persons who did it" (n).

*Acquiescence and waiver.* Some of the instances in which the right to obtain the writ of prohibition has been lost through the *laches* of the applicant have been mentioned in the foregoing pages; but from them it appears that the writ was not withheld as a penalty upon the applicant for coming too late, but because, when the money had been paid out of court, and the process of the court finally completed, there was, in fact, nothing for the superior court to prohibit (see *ante*, p. 77). On the other hand it is suggested, in the opinion of Willes, J., already quoted (*ante*, p. 76), that where the defect of jurisdiction does not appear on the face of the proceedings, the court will withhold the writ if the defendant, knowing of the want of jurisdiction, has suffered the court to act without raising the objection. This opinion is, to some extent, supported by the judgment of Patteson, J., in *Yates v. Palmer* (o), that where a defendant appears at the trial and makes no objection to the jurisdiction whilst the case is proceeding, but suffers the court to act without protest or objection, as if it had jurisdiction, down to actual payment of damages and costs, it is too late to apply for a prohibition, although there was no opportunity for applying earlier, unless the want of jurisdiction appears on the face of the proceedings. Still the true *ratio decidendi* of the case appears to be that the case was ended, and that there was nothing to prohibit it (p). Assuming that the *dictum* of Pollock, C.B., in *Denton v. Marshall* (*ante*, p. 76), furnishes the true reason why a prohibition may issue after judgment, although there is, strictly speaking, no record upon which the want or excess of jurisdiction can appear, it would be in accordance with the older authorities (*ante*, p. 76) that no prohibition should issue. But the important question arises—Can acquiescence give jurisdiction to an inferior court where a statute has defined the limits beyond which its jurisdiction shall not extend; or can there be such a thing as waiver of a right to object that such a court has assumed an authority which neither a statute nor the common law has given it? "No agreement of counsel," says Lord Campbell, C.J., "to ab-

(n) *Per* Martin, B., *Denton v. Marshall*, 32 L. J. Q. B. 93. See, too, *per* Willes, J., *Mayor of London v. Cox*, L. R. 2 H. L. 263, and the cases there cited; and *per* Blackburn, J., *Brown v. Lon-*

*don and North Western Railway Co.*, 30 L. J. Q. B. 319, 319.

(o) 6 D. & L. 283.

(p) See *per* Pollock, C.B., and Parke, B., *Knowles v. Holden*, 24 L. J. Ex. 224.

stain from making the objection (that the cause of action did not arise within the jurisdiction) can alter the law of the land, which says that an inferior court can only hold plea where the cause of action arises within the local limits to which its jurisdiction by charter or custom is confined" (q). "Suppose," says Erle, J., "a plaintiff for tolls in a county court, and no objection there taken to the jurisdiction, still the defendant may come here for a prohibition. The admission of the party cannot give jurisdiction" (r). These *dicta* strongly support the proposition that neither waiver nor acquiescence will give jurisdiction to a court which does not possess it. It is further supported by the following *dictum* of Erle, J., which also affords a principle for guidance as to the kind of objection to the jurisdiction which may be waived: "Where an inferior court has no jurisdiction, from the beginning, a party, by taking a step in a cause before it, does not waive his right to object to the want of jurisdiction. But jurisdiction is sometimes *contingent*; in such case, if the defendant does not, by objecting at the proper time, exercise his right of destroying the jurisdiction, he cannot do so afterwards" (s). In that case leave had been obtained to enter a plaintiff and issue a summons for service out of the jurisdiction, the cause of action, it being alleged, having arisen within it. The order for leave to issue the summons was dated 30th October, 1847, and the defendant received it and the summons, dated 3rd January, 1850, on the same day. The defendant then gave notice of the defence of the Statute of Limitations, and this notice was held to be a waiver of his right to the minute examination of the process. It was in fact an irregularity only; and the question of jurisdiction was contingent on the due regularity of the process, and could therefore be waived (t). The case of *Knowles v. Holden* (u) was one of a different character, and the remarkably strong proofs of acquiescence in it were held not to give jurisdiction. The parties had appeared to a plaintiff, and had consented to a reference without objecting to the jurisdiction. During the progress of the reference, one of them objected to the jurisdiction of the

(q) *De Haber v. Queen of Portugal*, 20 L. J. Q. B. 498; 17 Q. B. 171.

(r) *Wadsworth v. Queen of Spain*, 20 L. J. Q. B. 493; 17 Q. B. 171. See, also, *Knowles v. Holden*, 24 L. J. Ex. 224: "The general rule is that parties,

by acquiescing in proceedings, cannot give jurisdiction," *per* Parke, B.

(s) *Jones v. James*, 19 L. J. Q. B. 258; 1 L. M. & P. 65.

(t) See *per* Parke, B., *Knowles v. Holden*, 24 L. J. Ex. 224.

(u) *Ibid.*, 223.

arbitrators, on the ground that title to land came in question, but they proceeded with the reference. "The defendants," says Pollock, C.B., "by attending the county court and not taking the objection at that time, have not given that court jurisdiction" (*v*). "An irregularity," says Parke, B., "may be waived. Where, however, the jurisdiction depends on the Act of Parliament, the case is very different from that of waiving a defect in an order" (*w*). As where an action was brought on a judgment of a superior court, before the provisions prohibiting such actions (*ante*, p. 12), and judgment was given without the production of the record of the superior court, the defendant was held to have waived the irregularity by afterwards claiming and proving a set-off (*x*). So, where the question of title to an office or to land is not raised at the hearing, but the party is taken to be duly appointed, or the title to land admitted, no prohibition will afterwards lie (*y*). In these cases acquiescence was clearly sufficient, for title could not be in question when the parties admitted that it was not.

It is important to notice that all the decisions cited upon the question of waiver and acquiescence were given before the provisions of the Acts of 1856 and 1867, enabling the parties to give jurisdiction, became law (see *ante*, p. 17). It seems not unlikely that it may be held that the *mode* in which the consent is to be given may be waived, and that in this way an actual absence of jurisdiction may be cured by an assent of the parties not expressed in either of the modes prescribed by the Act, if, after knowledge of a defect in the jurisdiction, the defendant acts in such a manner as to waive an irregularity of process (*z*).

It is no waiver of the right to obtain a prohibition to obtain an appeal-case from the county court judge (*a*).

*Practice.* The application for the writ may be made to a divisional court or to a judge of the high court at chambers, but not to a master or district registrar (*b*).

Any rule or order made by a judge, or any writ issued by virtue of it, may be discharged, or varied, or set aside

(*v*) *Knowles v. Holden*, 24 L. J. Ex. 224.

(*w*) *Ibid.*

(*x*) *Winsor v. Dunford*, 12 Q. B. 603; 18 L. J. Q. B. 14.

(*y*) *Stevenson v. Stickle*, 13 Jur. 1103; *Gwynne v. Knight*, 1 Ex. 802; 17 L. J. Ex. 168.

(*z*) See *per* Watson, B., *Lavford v. Partridge*, 26 L. J. Ex. 148.

(*a*) *Jackson v. Beaumont*, 11 Ex. 300; 24 L. J. Ex. 301.

(*b*) Jud. Act, order liv., rule 2; order xxxv., rule 4.

by a divisional court, on application by any party dissatisfied with such rule or order (c). This application formerly must have been made not later than the end of the term next following the making of the order (d).

The affidavit upon which the rule *nisi* is moved for should be intituled in the divisional court to which, or to the judge of which, the application is to be made, but not in any cause or matter. It should state such facts as that it may appear to the court or judge that the writ of prohibition ought to issue. The affidavits used in showing cause should, it seems, be intituled in the same way as the rule *nisi* is intituled (e).

The grant of a rule *nisi*, or summons, which should be served (f) without delay, will, if the court or judge so direct, operate as a stay of proceedings in the cause to which it relates until the determination of the rule or summons, or until such court or judge shall otherwise order. The judge of the county court must from time to time adjourn the hearing of the cause to such day as he may think fit, until such determination or such order be made. If a copy of the rule or summons be not served by the party who obtained it, on the opposite party and on the registrar of the county court, two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the divisional court or judge shall have made an order respecting such costs (g).

Where a writ addressed to the judge of a county court shall have been obtained on an *ex parte* application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the divisional court or judge shall have made an order respecting such costs (h).

Where a rule was ordered to be served on the plaintiff

(c) 13 & 14 Vict. c. 61, s. 22; 36 & 37 Vict. c. 66, s. 50; Jud. Act, order liv., rule 6.

(d) *Jordan v. Wilson*, 3 E. & B. 193.

(e) See form of affidavit, form 1, Appendix F.

(f) See, as to the effect of service, *Denton v. Marshall*, 32 L. J. Ex. 39.

(g) 19 & 20 Vict. c. 108, s. 40, form 105.

(h) *Ibid.*, s. 41, form 106.

and on the judge, service on the judge and the attorney for the plaintiff in the county court was held insufficient (*i*).

The matter is to be finally disposed of by rule or order, and no declaration or further proceedings in prohibition are necessary or are allowed (*j*). It is not necessary that the grounds for issuing the writ should appear in the rule or order (*k*).

The order of a judge may be appealed from in the ordinary way by motion within eight days (*l*); and the decision of a divisional court may be reviewed by the court itself, but no application can be made in the same matter to another divisional court, or to another judge. A second application may, however, be made to the divisional court, or a judge thereof, in which the first application was made, upon different grounds (*m*). It is conceived that no appeal from a divisional court to the court of appeal was intended to be permitted; *quære*, however, whether by virtue of the Judicature Acts an appeal will now lie.

## PART VI. MANDAMUS.

The remedy for an excess or usurpation of jurisdiction by a county court has just been explained to be by prohibition. In the present section, the proceedings by means of which the judge or the officers of a county court may be compelled to exercise their jurisdiction, will be explained. The common law remedy for neglect of the performance of duty by officials was by writ of mandamus, issued from the Court of Queen's Bench, ordering the performance of the neglected duty. The remedy by mandamus, so far as it applies to any judge or officer of a county court refusing to do his duty, is now taken away (see *post*, p. 87), and a simpler proceeding by rule, to be obtained, it is conceived, in any divisional court, has been substituted (*n*). The same principles, however, which governed the granting of a mandamus before the Act, still govern the grant of the rule (*o*). It remains to be seen

(*i*) *Massey v. Burton*, 3 Jur. N. S. 1108.

(*j*) 19 & 20 Vict. c. 108, s. 42. See judgment of the court in *Lawford v. Partridge*, 1 H. & N. 621; 26 L. J. Ex. 147.

(*k*) *Eversfield v. Newman*, 4 C. B. N. S. 418.

(*l*) 36 & 37 Vict. c. 66, s. 50; Jud. Act, order liv., rule 6.

(*m*) 19 & 20 Vict. c. 108, s. 44.

(*n*) See *ante*, pp. 2, 3, and 36 & 37 Vict. c. 66, s. 25, sub-s. 8.

(*o*) *Irvine v. Askew* (1), 20 L. T. N. S. 581.

whether the rule will now be granted to compel a judge to hear a plaint entered under the Act giving him a jurisdiction in certain equity matters.

In considering the question as to whether the rule will lie, the following considerations, applicable to the grant of a mandamus at common law, are, it is conceived, equally applicable to the grant of the rule:—

1. The writ is a high prerogative writ, and is not granted of right, *ex debito justitiæ* (*p*).

So, although the court will generally feel bound to grant the rule in cases where there is a good ground for its interference, it will, nevertheless, exercise a discretion, and if the circumstances are such as to show a kind of equitable reason why the rule should not go, it will refuse it. So, where a judge acted under a particular impression as to a point of law, in a case involving a small amount, and the effect of granting the rule would have been to give the party moving an indirect appeal, when the statute had forbidden a direct one, the rule was refused (*q*). And the court will not compel a judge or officer to do that which might bring him in peril of an action (*r*). And it seems that the rule will not be granted to compel an act to be done under circumstances in which prohibition would lie (*s*). Nor will the rule be granted unless it be applied for in a reasonable time; so, where more than twelve months had elapsed, the court refused the rule (*t*).

2. Two circumstances must concur to justify the grant of the rule—viz., a specific legal right to the per-

(*p*) See *Tapping on Mandamus*, p. 4, and see note (*a*): "By the term 'prerogative writ' is meant either, firstly, that the power to award it is not delegated by the Crown to the ordinary judges between party and party—that is, the justices of Common Bench—but is reserved for that court in which the Queen is supposed to be personally present; or, secondly, that such a writ is one of grace and favour granted according to discretion upon probable cause shown, and not a writ of right; that is, not such a writ as the subject has a right to call upon the court to issue under the

clause of *Magna Charta*, by which the Queen is bound not to refuse or delay justice or right."

(*q*) *Brown v. Taylor*, 18 L. T. N. S. 657. This case was decided before the 30 & 31 Vict. c. 142, s. 13, giving an appeal irrespective of the amount claimed, with consent of the judge.

(*r*) See *per* Lord Campbell, C.J., *Reg. v. Dowling*, 2 E. & B. 196, 204.

(*s*) *Brown v. London and North Western Railway Co.*, 32 L. J. Q. B. 318, 319, *per* Blackburn, J.

(*t*) *Coke v. Jones*, 4 L. T. N. S. 306; 9 W. R. 618.



formance of the act required to be done, and the absence of an effectual remedy (*u*). Thus the courts have always refused to issue a mandamus where the ordinary remedy by action at law was adequate to enforce the legal right in question, though it was sometimes granted where an indictment might have been preferred, the test being whether mandamus or indictment was the more effectual remedy (*v*). Nor was the writ granted where a statute prescribed another particular remedy for the non-performance of the act sought to be performed (*w*).

Hence it is apprehended that the rule will be granted to the judge or officer of a county court to compel him to perform any act to which the person seeking the remedy is clearly by law entitled; but it is open to doubt, in consequence of the rules of the common law above mentioned in regard to the issue of the writ of mandamus, whether, in those cases in which a particular remedy has been specified for neglect to do a particular act, the rule will be granted. Thus particular provisions (*x*) are provided in case of the neglect of the bailiff of a foreign district to make a return to a summons sent to him for service (*y*), and of the neglect of a bailiff to levy execution (*z*); and it is by no means clear that in such cases the court would grant the rule, unless it could be shown that the applicant would not obtain an equivalent by the process specified.

It is obvious that the court will not grant the rule to compel a judge to hear a plaint over which he has no jurisdiction (*a*), nor will it interfere in a matter clearly within his discretion (*b*). But where there is a clear right to the performance of an act the rule will go, although the judge or officer has acted under a mistake of law, or a

(*u*) Com. Dig., Mandamus A; *Reg. v. Windham*, 1 Cowp. 377, per Lord Mansfield, C.J.; *Rev v. Bristol Dock Co.*, 12 East, 429; *Rev v. Nottingham Water Works Co.*, 6 A. & E. 355; *Reg. v. Garland*, L. R. 5 Q. B. 269, 272; 39 L. J. Q. B. 86.

(*v*) *Reg. v. Hull Railway Co.*, 6 Q. B. 70; 13 L. J. Q. B. 257; *Reg. v. Hopkins*, 1 Q. B. 161, 168; *Rev v. Severn Railway Co.*, 2 B. & A. 649; *Ex parte Robins*, 3 Jur. 103.

(*w*) *Stevens v. Evans*, Burr. 1157, per Dennison, J., *Rev v. Margate Pier Co.*, 3 B. & A. 223.

(*x*) Chap. xvii.

(*y*) Chaps. viii., xvii.

(*z*) 9 & 10 Vict. c. 95, s. 115.

(*a*) *Brown v. London and North Western Railway Co.*, 32 L. J. Q. B. 318; 11 W. R. 884; 8 L. T. N. S. 695; *Ex parte Payne*, 5 D. & L. 679; 18 L. J. Q. B. 197.

(*b*) *Clifton v. Furley*, 7 H. & N. 783; 31 L. J. Ex. 170.

misapprehension of his duty in refusing to perform it; so a rule was granted to a registrar to compel him to issue execution for the costs of a judgment-creditor who had taken out of court the amount of a judgment debt paid into court without costs (*c*); and it will lie to compel the registrar to issue a summons under the "Bills of Exchange Act" (*d*). So, where a judge wrongly decides upon some preliminary question, and refuses to go into the merits of a case, the rule will be granted; as in interpleader issues which a judge refuses to hear, upon the erroneous ground that the particulars delivered are insufficient (*e*); but, as will be seen presently, the court will not by rule review the decision of the judge upon a matter into the merits of which he has entered.

The rule will lie to compel a judge to hear a cause sent for trial by order of a judge of the high court, under the provisions in that behalf (*f*), and to compel him to try a cause by jury where there is a right to a jury (*g*). Where a judge refused to receive the verdict of a jury, and discharged it, a rule was granted to show cause why the verdict should not be received and entered (*h*); but, as was pointed out by the court in argument, the rule could be of little use, as on the application of the other party the judge would grant a new trial. The rule will lie to compel the judge to sign an appeal-case properly stated, and presented to him for signature (*i*), and also to compel him to state a case in such a manner that the court of appeal may have proper materials before them for forming an opinion upon the question upon which the appeal is brought (*j*).

Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror, and to abide by the decision at which the judge might arrive after viewing the

(*c*) *Reg. v. Fletcher*, 2 E. & B. 279; S. C., *nom. Reg. v. County Court of Surrey*, 21 L. J. Q. B. 310.

(*d*) *Holborrow v. Jones, per Smith, J.*, L. R. 4 C. P. 14; 38 L. J. C. P. 22; 17 W. R. 54; 19 L. T. N. S. 320.

(*e*) *Reg. v. Richards*, 2 L. M. & P. 263; 20 L. J. Q. B. 351; *Churchward v. Coleman*, L. R. 2 Q. B. 18; 36 L. J. Q. B. 67.

(*f*) *Blades v. Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133;

22 W. R. 643; 30 L. T. N. S. 378.

(*g*) *Reg. v. Harwood*, 1 B. C. C. 144; 22 L. J. Q. B. 127.

(*h*) *Jardine v. Smith*, 8 W. R. 464.

(*i*) *Irving v. Askew* (2), L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; *Ex parte Furber*, 27 L. J. Ex. 453; 3 H. & N. 521.

(*j*) *Thornewell v. Wigner*, L. R. 6 Ex. 87; 40 L. J. Ex. 48; 19 W. R. 356; 24 L. T. N. S. 140.

premises, and before the judge delivered his decision, the defendant withdrew his consent, a rule was granted ordering the judge to appoint a day for the rehearing of the cause, on the ground that the repudiation of the defendant was a repudiation of the whole agreement, and that the cause must therefore be heard *de novo* (*k*).

3. Though the writ will lie where that has not been done which a statute orders to be done, it will not be granted for the purpose of undoing what has been done (*l*); so it will not lie where an inferior court has decided in a particular case unjustly or improperly (*m*).

If the judge of a county court abstains from entering upon the merits of a case, in consequence of wrongly deciding a preliminary point upon which his jurisdiction depends, he may be set right, as has been shown above, by rule ordering him to hear the case; but if he enters upon the hearing of a case, and decides it, however erroneously, the rule will not be granted (*n*). He is then *functus officio*; and the remedy for his error is by appeal, or in some cases by prohibition. Where an insolvent (before the late Bankruptcy Acts) filed a petition in a county court, and obtained an order for protection until his last examination, and afterwards applied to withdraw the petition, but the judge refused to allow him to do so, and adjourned the examination *sine die*, the court held that it had no power to compel him by rule to remove the petition from the file, or dismiss it, or name a day for the examination (*o*). Where a judge refused to hear certain witnesses tendered by the plaintiff, and he in consequence elected to be nonsuited, the court refused the rule, holding that whilst the nonsuit stood it left the judge no case on which he could be compelled to act (*p*). So, where a judge, after hearing the plaintiff's case, and during the examination of the defendant's witnesses, discharged the jury, and directed a nonsuit to be entered, notwithstanding the protest of the plaintiff, the court regretting they had not the power, held

(*k*) *Norburn v. Hilliam*, L. R., 5 C. P. 129; 39 L. J. C. P. 183; 22 L. T. N. S. 67.

(*l*) *Per* Lord Campbell, C.J., *Ex parte Nash*, 15 Q. B. 95; 19 L. J. Q. B. 296, 297.

(*m*) *Reg. v. Justices of Worcestershire*, 3 E. & B. 477; *Sturgis v. Joy*, 2 E. & B. 740.

(*n*) See *per* Coleridge, J., *Reg. v. Richards*, 20 L. J. Q. B. 352, and *per* Erle, J., *Ex parte Milner*, 15 Jur. 1038.

(*o*) *In re Corbett*, 4 H. & N. 452; 28 L. J. Ex. 254.

(*p*) *Fortescue v. Paton*, 3 L. T. N. S. 268.

that they could not grant the rule (*q*). So a rule was refused to order a judge to review a taxation of costs, the court holding that it was within the judge's discretion, and could not be reviewed by rule (*r*). The decision may also be supported as being within the principle of the present rule, the refusal of the order to review being a decision upon the whole matter before the judge.

4. A mandamus is never granted unless there has been a distinct demand for the performance of that which it is the object of the mandamus to enforce, and a direct refusal, either in terms, or by circumstances which show an intention to withhold from doing the act required (*s*).

Hence, if the judge or officer of a county court absolutely refuses to do the duty to the performance of which the applicant is entitled, the court will grant the rule (*t*); but a mere qualified and temporary refusal, as by suggesting an adjournment with a view to an arrangement, is an insufficient refusal (*u*).

5. The remedy by mandamus cannot be extended to cases to which it does not by law extend, though the parties waive the objection (*v*).

*Practice.* The section of the County Courts Act, substituting the proceedings by rule for the writ of mandamus, as amended by a later Act, is as follows: "No writ of mandamus shall henceforth issue to a judge or an officer of the county court for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to any superior court upon an affidavit of the facts, for a rule or summons calling upon such judge or officer of a county court, and also the party to be affected by such act, to show cause why such act should not be done; and if, after the service of such rule or summons, good cause shall not be shown, the superior court may by rule or order direct the act to be done, and the judge or officer of the county court, upon being served with such rule or order, shall obey the same on pain of attachment;

(*q*) *Kershaw v. Chantler*, 26 L. T. N. S. 474.

(*r*) *Clifton v. Furley*, 7 H. & N. 783; 31 L. J. Ex. 170.

(*s*) *Reg. v. Bristol Railway Co.*, 4 Q. B. 162; 12 L. J. Q. B. 106; *Rex v. Brecknock, &c., Canal Co.*, 3 A. & E. 217; L. J. 4 M. C. 105.

(*t*) *Ex parte Furber*, *ante*, p. 85.

(*u*) *Irving v. Askew* (1), 20 L. T. N. S. 584.

(*v*) See *per Lord Campbell, C.J.*, *Reg. v. Lords of Treasury*, 16 Q. B. 359; S. C., 20 L. J. Q. B. 305; and see *Reg. v. Lords of Treasury*, L. R. 7 Q. B. 387.

and in any event the superior court may make such order with respect to costs as to the court shall seem fit" (*w*).

The judge of the City of London Court has no privilege reserved under 30 & 31 Vict. c. 141, s. 35, exempting him from being subject to the proceedings substituted for mandamus (*x*).

The rule may be applied for, it is conceived, in any divisional court (*v*). The application should be made in a reasonable time. When more than twelve months had elapsed, the court refused the rule (*y*).

The affidavit upon which the rule is moved for should be intituled in the divisional court to which the application is to be made, but not in any cause. It should state such facts as that it may appear to the court that the rule ought to be granted. The rule is not absolute in the first instance. It should call on, not only the judge or officer of the county court, but also the party to be affected by the act to be done, to show cause. It should be served on the parties called on to show cause. Service need not be personal. The party showing cause must take an office copy of the rule and the affidavits on which it was moved, otherwise he cannot be heard. The affidavits used in showing cause should be intituled in the same way as the rule *nisi*.

The want of the affidavit on the application for the rule is an irregularity only; and it is too late for a judge, who fails to attend the argument, after the rule has been made absolute and served, to object to the irregularity (*z*).

Where the rule is granted to correct the decision of the judge upon some preliminary matter (*ante*, p. 85), the courts differ as to their power to reverse the order of the county court as to costs, the Court of Exchequer having held that they can deal with them (*a*), the Court of Queen's Bench that they cannot (*b*). The latter decision would appear to be the more correct one. The costs of the rule are in the discretion of the court, and may be granted to the applicant if the court thinks fit, though not asked for in the rule (*c*).

When application for the rule has been made to any

(*w*) 19 & 20 Vict. c. 108, s. 43; 21 & 22 Vict. c. 74, s. 4; and see *ante*, p. 2.

(*x*) *Blades v. Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. N. S. 378; 22 W. R. 643.

(*y*) *Coke v. Jones*, 4 L. T. N. S. 306; 9 W. R. 618.

(*z*) *Ex parte Furber*, 3 H. & N. 521; 27 L. J. Ex. 453.

(*a*) *Whitehead v. Procter*, 13 H. & N. 532.

(*b*) *Churchward v. Coleman*, L. R. 2 Q. B. 18; 36 L. J. Q. B. 57.

(*c*) *Norburn v. Hilliam*, L. R. 5 C. P. 129; 39 L. J. C. P. 183; 22 L. T. N. S. 67.

divisional court, and refused, no other divisional court may grant it; but a second application may be made to the same divisional court which refused it on grounds different from those on which the first application was founded (*d*). It is conceived that an appeal will now lie to the court of appeal under 36 & 37 Vict. c. 66, s. 19.

If the rule be made absolute, it should be drawn up and served. If not obeyed, it is enforced by attachment (*e*).

(*d*) 19 & 20 Vict. c. 108, s. 44.

(*e*) *Ibid.*, s. 43. See *Ex parte Furber, supra*.

## CHAPTER II.

### PARTIES AND NOTICE OF ACTION.

#### PART I. THE CHOICE OF PARTIES.

THE rules as to parties, which are prescribed by the new county court rules, are substantially the same as those which have been enacted under the Judicature Act in reference to actions in the high court. Formerly, the choice of parties was one sometimes of great difficulty, and though wide powers of amendment have been permitted of late years, there were many cases in which the action was liable to be defeated through the improper choice of parties. The necessity for care in the choice of parties under the new rules is not dispensed with, as the consequence of improper choice, though not generally fatal to the action, may be the penalty to pay the costs occasioned by it. The following provisions as to parties, except where it is otherwise stated in the ensuing pages, apply to all actions, whether common law, equity, or otherwise.

*Parties generally.* One of the most important amendments of the law affecting the power to sue is that which renders effectual in all courts the absolute assignment by writing under the hand of the assignor of a debt or *chose in action* (a). Such assignments were formerly inoperative at law, though effectual in equity; but even at law, by statute, an action might be brought in the name of the assignee of a policy of life or marine assurance (b), or by

(a) 36 & 37 Vict. c. 66, s. 25, sub-s. 6, and s. 91. See the sections in Appendix A, and see order xxi., rules 9, 10, as to disputed assignments.

(b) 30 & 31 Vict. c. 111; 31 & 32 Vict. c. 86, s. 1. See *Lloyd v. Fleming*, L. R. 7 Q. B. 299; 41 L. J. Q. B. 93; 20 W. R. 296.



the trustee of a bankrupt to recover *choses in action* belonging to the bankrupt (c), or by the assignee of the trustee (d). So bills of exchange, promissory notes (e), bills of lading (f), bail bonds (g), and *choses in action*, belonging to companies under the Companies Act, 1862 (h), were exceptions to the rule. The assignee is now empowered to sue in his own name, when the assignment is one which comes within the above section of the Judicature Act, irrespective of any other statutory power. In cases not within this section, or within other enabling statutory authority, the assignee will still probably be compelled to sue in the name of the assignor. (See the provisions in the nature of interpleader when the assignor disputes the assignment in an action by the assignee against the debtor, chap. viii.)

As a general rule, it may still be broadly stated that the proper person to bring an action is he whose right has been violated (i); and all persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative; and judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to, without any amendment. The court has power, however, to direct the payment by the plaintiff of any costs occasioned to a defendant by the joinder of any person not found to be entitled to relief (j). Where there are numerous parties having the same interest in one action, one or more may sue on behalf or for the benefit of all the parties so interested (k). In such case the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against either or any of such persons if they or he had been plaintiff (l).

All persons may be joined as defendants against whom the right to relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment (m). It is not necessary that every

(c) 32 & 33 Vict. c. 71, s. 22.

(d) *Ibid.*, s. 111.

(e) 4 Anne, c. 9, s. 1.

(f) 18 & 19 Vict. c. 111, s. 1.

(g) 4 Anne, c. 16, s. 20.

(h) 25 & 26 Vict. c. 89, s.

(i) See *per* Willes, J., *Gray v. Pearson*, L. R. 5 C. P. 574; S. C., 23 L. T. N. S. 416.

(j) Order v., rule 1.

(k) *Ibid.*, rule 8.

(l) Order ix., rule 1.

(m) Order v., rule 2.

defendant shall be interested as to all the relief prayed for, or as to every cause of action included; but the court may make such order as may be just to prevent any defendant from being required to attend any proceedings in which he may have no interest (*n*). All or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes, may be joined as defendants (*o*). Where numerous parties have the same interest in an action, one or more of them may be sued, or may be authorised by the judge to defend on behalf or for the benefit of all the parties so interested. Application may be made either at the trial or in chambers (*p*). Where the defendant wishes to defend on behalf or for the benefit of other persons under the last rule, he must, within two clear days of the date of service of the summons on him, apply to the registrar for leave so to defend, and must file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons; and the registrar may thereupon make an order for the defendant so to defend, and must add the names to that of the defendant in the plaint-book; and a copy of the order must be personally served on each of such persons, and notice (*q*) must be sent to the plaintiff. The plaintiff, or any of the persons whose names have been so added, may at the trial object to the defendant defending on behalf of all or any of such persons, and the judge may, if he think fit, strike the names of all or any of them out of the proceedings, and order the defendant to pay such costs as he may think fit (*r*). Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, so that in the action the question which defendant is liable, and to what extent, may be determined as between all parties (*s*).

In county courts a plaintiff may sue or serve with process one or more of several persons jointly answerable, and judgment may then be obtained and execution issued against him, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court (*t*). As all the County Courts' Acts are read together as one, there appears to be no reason why this provision should not extend to every action which may

(*n*) Order v., rule 3.

(*o*) *Ibid.*, rule 4.

(*p*) *Ibid.*, rule 8. See chap. iv.,  
as to applications in chambers.

(*q*) Form 64.

(*r*) Order ix., rule 2.

(*s*) Order v., rule 5.

(*t*) 9 & 10 Vict. c. 95, s. 68.

be commenced in a county court. Where a plaintiff avails himself of this provision the defendant may, however, rely on any set-off or other defence to which he would be entitled if all the persons liable were made defendants (*u*). Every person so sued, against whom judgment has been obtained, and who has satisfied such judgment, will be entitled to recover in the county court contribution from any other person jointly liable with him (*v*).

*Amendment of parties generally.* No action is to be defeated by a misjoinder of parties (*w*), but it is not to be supposed that if the plaintiff recklessly brings his action in the name of or against the wrong person the court will help him. Formerly at law, if the plaintiff brought his action in the name of the wrong person, the error was fatal; but now, when so commenced, or where it is doubtful whether it has been commenced in the name of the right plaintiffs, the court, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may, if the persons to be substituted consent, order such other persons to be substituted or added on such terms as to notice or otherwise as may seem just (*x*). If the plaintiff has altogether mistaken the defendant and sued the wrong person, it is conceived that although an amendment might be made (even without the appearance of the proper defendant himself at the trial) under the large powers of amendment to be presently noticed, the court would, probably, leave the plaintiff to commence a fresh action. Where, at the trial, a person appears and admits that he is the person whom the defendant intended to sue, or ought to have sued, his name may, with the consent of the plaintiff, be substituted, and the action will then proceed in all respects as if the new defendant had been originally a party. The costs of the person improperly made defendant will be in the discretion of the court (*y*).

Where the name or description of a *plaintiff* in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as it may think fit, and thereupon the action will proceed, as to all matters, as if the name or description had been originally such as it appears after the amendment has been made (*z*). An action for expenses recoverable by the

(*u*) Order ix., rule 6.

(*v*) 9 & 10 Vict. c. 95, s. 68.

(*w*) Order xvii., rule 12.

(*x*) Order xvii., rule 1.

(*y*) *Ibid.*, rule 3.

(*z*) *Ibid.*, rule 6.

local authority, under the Contagious Diseases (Animals) Act, 1869, was brought in the name of J. M., who sued as, and was described in the summons as, "inspector appointed by the local authority," &c. The judge, at the trial, amended the summons by substituting "The local authority for," &c., as plaintiff, and this amendment was held to have been a proper amendment of the description of the plaintiff (a).

Where the name or description of a *defendant* in the summons is insufficient or incorrect, it may at the trial be amended, at the instance of either party, by order of the court, on such terms as it may think fit; and thereupon the action will proceed as to all matters as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description, the action may proceed; and in the judgment, and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner (b).

Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the court may, at the instance of either party, on such terms as it may think fit, amend the proceedings accordingly; and thereupon the action will proceed as to all matters as if the proper description of the party had been given in the summons (c). Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the court may, at the instance of either party, on such terms as it may think fit, amend the proceedings accordingly; and thereupon the action will proceed as to all matters as if the proper description of the party had been given in the summons (d).

In actions by or against a husband, if a wife or husband be improperly joined or omitted, or if one of them be improperly substituted for the other, the summons may at the trial be amended, at the instance of either party, by order of the court, on such terms as it may think fit; and thereupon the action will proceed as to set-off and other matters as if the proper person had been made party to the action (e).

Where it appears that a *greater* number of persons have

(a) *Mills v. Scott*, L. R. 8 Q. B. 496; 29 L. T. N. S. 96; 42 L. J. Q. B. 234; 21 W. R. 915.

(b) Order xvii., rule 7.

(c) *Ibid.*, rule 4.

(d) *Ibid.*, rule 5.

(e) *Ibid.*, rule 8.

been made *plaintiffs* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the court, on such terms as it may think fit; and thereupon the cause will proceed as to all matters as if the proper party or parties had alone been made plaintiffs (*f*).

Where it appears at the trial that a *less* number of persons have been made *plaintiffs* than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the court, on such terms as it may think fit; and thereupon the action will proceed as to all matters as if the proper persons had been originally made parties; and if such person shall, either at the trial or at some adjournment thereof, personally or by writing, signed by him or his solicitor, consent to become a plaintiff in manner aforesaid, the court must then pronounce judgment as if such person had originally been made a plaintiff; but if such person shall not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, judgment of nonsuit must be entered; but such judgment will not have the effect of a judgment upon the merits (*g*).

Where it appears at the trial that a *greater* number of persons have been made *defendants* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the court on such terms as it may think fit; and thereupon the action will proceed as to all matters as if the proper party or parties had alone been made defendants, and the costs of the person improperly joined as a defendant will be in the discretion of the judge (*h*).

Where two or more persons are made defendants, and some of them have not been served, the name or names of the defendant or defendants who have not been served may, at the instance of either party, be struck out by order of the court on such terms as it may think fit; and thereupon the cause will proceed, as to all matters, as if the party or parties whose name or names have not been struck out had alone been made defendant or defendants; or it may be adjourned for service of any defendant not served (*i*).

No action may be defeated by misjoinder of parties; but the court may in every action deal with the matter in

(*f*) Order xvii., rule 9.

(*g*) *Ibid.*, rule 2.

(*h*) Order xvii., rule 10.

(*i*) *Ibid.*, rule 11.

controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just, order that the name or names of any party or parties, whether as plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary, in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person may be added as a plaintiff without his consent. All parties whose names are so added as defendants must be served with notice, and the proceedings against them will be deemed to have begun only on the service of such notice (*j*).

Applications to add, or strike out or substitute, a party may be made at the trial or to the judge in chambers (*k*).

Subject to the provisions of the rules of practice prescribed, the provisions as to parties contained in 15 & 16 Vict. c. 86, s. 42, are to be in force as to actions in the county courts (*l*).

(*j*) Order xvii., rule 12.

(*k*) *Ibid.*, rule 13. See chap. iv., as to applications at chambers.

(*l*) Order v., rule 11. See order xvi., rule 12. This section provides as follows: "It shall not be competent to any defendant in any suit in the said court (that is, the Court of Chancery) to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend; and such rules shall be deemed and taken to be part of the law and practice of the said court, and any law or practice of the said court inconsistent therewith shall be, and is, hereby abrogated and annulled."

RULE 1.—"Any residuary legatee or next of kin may, without serving the remaining residuary legatee or next of kin, have a decree for the administration of the personal estate of a deceased person."

RULE 2.—"Any legatee interested in a legacy charged upon real estate, and any person inter-

ested in the proceeds of real estate directed to be sold, may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person."

RULE 3.—"Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have a like decree."

RULE 4.—"Any one of several *cestuis que trust*, under any deed or instrument, may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument."

RULE 5.—"In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and all persons having the same interest."

RULE 6.—"Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestui que trust*, for the administration of the es-

*Partners.* Any persons claiming or liable as co-partners may sue or be sued in the name of their respective firms; and on application by any party to the action, the registrar may order a statement of the names of the persons who are co-partners to be furnished in such manner, and verified on oath or otherwise, as the registrar may direct (*m*). Where partners sue in the name of their firm, the defendant may give notice in writing, within three days from the service of the summons, to the plaintiff, that he requires the names of the persons who are co-partners, and the plaintiff must then forthwith send by post to the defendant and to the registrar their names and addresses. The judge may also at any time, without such notice, order the plaintiff to give the names to any defendant. And if from the names not being given by the plaintiff before entering the plaint, or from any delay in giving them after notice, the defendant is prevented or unduly delayed in making his defence, the judge may adjourn the trial on such terms as he thinks fit (*n*). Where the action is brought against a firm, and the plaintiff desires judgment against each

tate, or the execution of the trusts.

RULE 7.—“In all the above cases the court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

RULE 8.—“In all the above cases the persons who, according to the present practice of the court, would be necessary parties to the suits, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suits, and they may, by an order of court, have liberty to attend the proceedings under the

decree; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the lord chancellor, apply to the court to add to the decree.

RULE 9.—“In all suits concerning real or personal estate, which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust in the same manner and to the same extent as the executors and administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the parties beneficially interested under the trusts parties to the suit; but the court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.”

(*m*) Order v., rule 9.

(*n*) Order xi., rule 9.



member, he must state the names of the persons whom he believes to be co-partners, and file an affidavit and copy setting forth the ground of his belief; and the registrar must attach a copy of the affidavit to the summons, with a notice (*o*) that if sufficient cause be not shown at the trial, the judge will order judgment against all the persons whose names have been so given and verified. And the judge may at the trial give judgment, if he thinks fit, against all the persons whose names have been inserted in such notice, and who have been served with the summons, copy affidavit, and notice in the manner and within the time in which an ordinary summons should be served (*p*). This rule seems to require that the summons should be served on each of the persons alleged to be partners; and in that case the plaintiff will, it is conceived, be required to deliver to the registrar as many copies of his particulars and of his affidavit as there are persons named, and also an additional copy of each for the use of the judge (*q*).

*Trustees and executors* (*r*). Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and will be considered as representing such parties in the action; but the court may, at the trial, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto (*s*). In the county courts, executors and administrators may sue and be sued in their own names, as if the action were brought by or against them in their own right (*t*). Trustees, executors, or administrators, by suing in their own names, instead of in a representative character, will, it is conceived, let in a set-off or other counter claim, available against them in their private capacity. At law, the rule as to joinder has been that all the executors named in the will should be joined as plaintiffs, though one only had proved (*u*), except in case of renunciation (*v*); but the rule in equity has been much more elastic (*w*). Assuming that the provisions of the 9 & 10 Vict. c. 95, s. 68 (*x*), extend

(*o*) Form 63.

(*p*) Order v., rule 9.

(*q*) Order xxxvii., rule 31.

(*r*) See rules as to joinder of causes of action, *ante*, p. 21.

(*s*) Order v., rule 6.

(*t*) 9 & 10 Vict. c. 95, s. 66.

(*u*) 1 Wms. Saund. 291, *k*, *l*.

(*v*) 20 & 21 Vict. c. 77, s. 79.

(*w*) See Williams on Executors, 1724; Daniel, Chan. Prac., 5th edit., p. 200.

(*x*) *Ante*, p. 92.

to actions against executors, the plaintiff will only require to be cautious to select as defendant an executor who has administered (*y*); if not, all who have administered should be joined (*z*).

*Infants.* A person under the age of twenty-one years may sue in a county court for any sum not greater than 20*l.* which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age (*a*)—*i.e.*, he may, in such cases, sue in his own name without a next friend, and no undertaking for costs is required. In all other cases he must sue by his next friend (*b*), and when he wishes to enter a plaint he must procure the attendance of a next friend at the office of the registrar. The plaint will not then be entered until the next friend has undertaken in the form prescribed (*c*) to be responsible for costs. On entering into the undertaking, which must be filed by the registrar, the next friend will be liable for costs in the same manner and to the same extent as an ordinary plaintiff. The action will proceed in the name of the infant by such next friend, and no order of the court will be necessary for the appointment. If the plaintiff fail in or discontinue his suit, and do not pay the costs awarded by the court to the defendant, proceedings may be taken for the recovery of such amount from the next friend, as for the recovery of any debt ordered to be paid by the court (*d*)—*i.e.*, it is presumed, it will be equivalent to a judgment (*e*).

An infant may be sued in his own name, but must defend by guardian (*f*), and if he relies on infancy as a defence, notice (*g*) thereof must be given. At the hearing, if he appears and names a person who then and there consents to act as guardian, he will be appointed accordingly (*h*). If the infant does not name a guardian who is willing to act, the judge may appoint any person in court willing to become guardian, or, in default of such person, must appoint the registrar (*i*). The name of the guardian appointed must be entered in the order of the

(*y*) See, as to amendment, *sup.*

(*z*) Daniel, Chan. Prac. 221; Bul. & L. 18, note *b*; Dicey on Parties, 322.

(*a*) 9 & 10 Vict. c. 95, s. 64.

(*b*) Order v., rule 7.

(*c*) Form 42.

(*d*) Order iv., rule 9.

(*e*) See *post*, p. 103, as to points as to married women who are infants under Married Women's Property Act, 1870.

(*f*) Order v., rule 7.

(*g*) *Post*, chap. iii., part 4.

(*h*) Form 95.

(*i*) Form 96.

judge; but no responsibility will attach to any person appointed at the instance of the court (*j*).

An infant cannot validly bind himself to another by contract, except for necessities suitable to his age, condition, and wants; a contract made by him, except for necessities, may be avoided by him on the ground of his infancy (*k*). Such contracts were formerly voidable only, and not void; but certain contracts of infants have, by a recent Act of Parliament, been rendered void and incapable of ratification (*l*).

*Lunatics.* In all cases in which lunatics and persons of unsound mind, not so found by inquisition, might respectively, before the 1st November, 1875, have sued as plaintiffs, or would have been liable to be sued as defendants, in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in the manner practised in the Court of Chancery before the Judicature Act, and may, in like manner, defend any action by their committees or guardians appointed for that purpose (*m*).

*Husband and wife.* Except in cases where the husband of a married woman was civilly, or presumed to be dead, or where she had a judicial separation or protection order, and perhaps in some minor cases, until a recent period, a married woman could never sue or be sued alone (*i.e.*, without the joinder of either husband or next friend), either at law or in equity (*n*). The Married Women's Property Act, 1870, introduced an exception in regard to a married woman's power to sue alone. By that Act, various kinds

(*j*) Order xvi., rule 9.

(*k*) Leake on Contracts, 226.

(*l*) 37 & 38 Vict. c. 62. By sect. 1 it is enacted: "All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent, or to be lent, or for goods supplied, or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable."

Sect. 2. "No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age." See, as to the effect of this Act, *Ex parte Kibble, In re Onslow*, L. R. 10 Ch. 373, where it was held that a ratification after the Act of a contract made before the Act was void.

(*m*) Order vi., rule 8.

(*n*) Dicey on Parties, 171, 296; Daniel, Chan. Prac. 85—103.

of property are declared to be, under certain circumstances, the separate property of the wife (o); and by the 11th section it is provided that: "A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by the Act declared to be her separate property; or of any property belonging to her before marriage, and (*sic*) which her husband shall, by writing under his hand, have agreed with her, shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever, for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property" (p).

It is plain that this section only affects property declared by the Act to be the separate property of the wife, and property belonging to her before marriage, which her husband has by writing agreed shall be her separate property. *Quære*, whether an ordinary antenuptial settlement would be a "writing" within the section; and whether in an action, whether legal or equitable, affecting property declared by the settlement to be separate, she can sue without a next friend? If the property under the settlement be vested in trustees, can the wife sue the trustees for the income, or, where entitled to the *corpus*, for the *corpus*, without joining her husband? The section seems to contemplate giving the wife the same protection against all persons as if she were an unmarried woman; hence there seems to be nothing to prevent her from bringing an action against her husband, if he detains or takes her money or property, or

(o) The section under which the most questions will probably arise is as follows: "The wages and earnings of any married woman acquired or gained by her after the 9th August, 1870, in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific

skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property:" 33 & 34 Vict. c. 93, s. 1.

(p) *Ibid.*, s. 11.

indicting him if he feloniously steals it or obtains it from her by false pretences (*q*).

The power to bring the action in the wife's own name is an important innovation upon the old law, and it is conceived that she may appoint a solicitor, which but for the statute she could not have done (*r*). At the same time, in the earlier part of the section the permissive word *may* is used, and there seems to be nothing to prevent the husband from being joined as a party in cases where he would have been joined before; but if joined without his authority, it is conceived that he might apply to the court to have his name struck out. It has been held that the Act enables a married woman to maintain an action in her own name to recover damages against her bankers for dishonouring cheques drawn by her in the course of a trade which she carried on separately from her husband, or for not duly presenting or not giving due notice of dishonour of a bill of exchange acquired by her in such trade, and intrusted to them by her for presentment (*s*); but the court expressly guarded their decision by observing that it "must not be taken to affirm, nor will it affirm, the general proposition that under this Act, and without reference to particular circumstances, a married woman can contract" (*t*). The observations made by the judges, however, during the argument appear to favour the general proposition referred to.

In the same case, the question as to the power of the wife, in respect of her separate property within the Act, to sue alone for damages for a tort, was raised in argument; but the court declined in their judgment to express an opinion upon the point. It is conceived, however, that the words of section 11 are sufficiently wide to enable her to obtain in her own name every protection in respect of her separate property which she would have had if unmarried; and that she may maintain such actions as trespass, trover, or detinue, and libel or slander of her in her separate trade

(*q*) See *ante*, p. 24, for provisions as to disputes between husband and wife as to separate property, which seem to be permissive merely.

(*r*) *Oulds v. Sanson*, 3 Taunt. 261.

(*s*) *Summers v. City Bank*, L. R. 9 C. P. 580; 43 L. J. C. P. 261; 31 L. T. N. S. 268.

(*t*) *Per* Lord Coleridge, C.J.,

delivering the judgment of the court, L. R. 9 C. P. 587. Compare the judgment of the Master of the Rolls in *Warne v. Routledge*, L. R. 18 Eq. 497; 43 L. J. Ch. 604; 22 W. R. 750; 30 L. T. N. S. 857; and in *Howard v. Bank of England*, L. R. 19 Eq. 295; 44 L. J. Ch. 329; and see *Ramsden v. Brearley*, *infra*.

or profession (*u*). If the married woman entitled under the Act to sue separately should be an infant, it is conceived that she would have to sue by her next friend, as the statute appears only to contemplate placing her in the position she would have been in if unmarried (*v*).

Whilst the provisions of the above Act are most stringent and comprehensive for the protection of the separate property of the wife, no provision whatever is made for suing her upon her contracts or other acts in relation to her separate property; hence it is conceived that whilst the law is altered for her benefit when she is plaintiff, it remains as it was when she is defendant (*w*). The only remedy against her is the long-established remedy in equity in regard to contracts made in reference to separate estate (*x*).

By section 12 of the same Act it was enacted that the husband shall not by reason of any marriage (after the 9th August, 1870) be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy such debts as if she had continued unmarried (*y*). This section, whilst exonerating the husband entirely, left a creditor without remedy altogether, unless the wife had property belonging to her for her separate use (*z*). By an amending Act, so much of the above section as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed, so far as respects marriages which take place after the passing of the Act (30th July, 1874), and it is provided that a husband and wife may be jointly sued for any such debt (*a*). This remits a creditor to the same rights as to the joinder of parties which existed before the Act of 1870; but the extent of the liability of the husband

(*u*) See *Ramsden v. Brearley*, L. R. 10 Q. B. 147; 44 L. J. Q. B. 46, where it was held that a wife with a protection order could sue for damages for libel.

(*v*) See *ante*, p. 99.

(*w*) See the decisions of M<sup>r</sup> Taggart, C.C.J., in *Hutton v. Marriott*, 15 S. J. 289, and of Russell, Q.C., C.C.J., in *M<sup>r</sup> Govern v. Hinkey*, 18 S. J. 205, where the point is very ably discussed.

(*x*) See *Johnson v. Gallagher*, 30 L. J. Ch. 298; 9 W. R. 506.

(*y*) In *Sanger v. Sanger*, L. R.

11 Eq. 470; 40 L. J. Ch. 372; 19 W. R. 782; 24 L. T. N. S. 649, the Master of the Rolls held that the restraint on anticipation clause is, so far as debts prior to marriage are concerned, nugatory.

(*z*) See *Ex parte Holland, In re Heneage*, L. R. 9 Ch. 307; 43 L. J. Bk. 85; 22 W. R. 425; 30 L. T. N. S. 106, where it was held that a wife without separate property could not be made bankrupt for debt incurred before marriage.

(*a*) 37 & 38 Vict. c. 50, s. 1.



is defined by subsequent clauses, and he is made responsible to the extent only of property vested in him or which he is entitled to claim in right of his wife, as specified in the Act (*b*). The husband, in regard to torts committed by the wife before marriage, and to breaches of contracts made by the wife before marriage, is placed in the same position as in respect of debts contracted by the wife before marriage (*c*).

*Old law of parties.* Irrespective of the above Act, in equity as well as at law, the general rule was that a husband must be joined in a suit respecting the rights of his wife, except under the particular circumstances already mentioned, and also except under the particular cases to be presently mentioned. At law a distinction existed between actions on her contracts, or for property accrued to the wife before marriage, or for injuries to her property not reduced into possession, and actions for or in respect of property coming to her after marriage; in the former cases

(*b*) Sects. 2, 3, 4, and 5.

(*c*) The following are the sections above referred to:—

“2.—The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets herein-after specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded, the husband shall be deemed to have confessed his liability so far as assets are concerned.

“3.—If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

“4.—When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

“5.—The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows:

- (1.) The value of the personal estate in possession of the wife which shall have vested in the husband:
- (2.) The value of the *choses in action* of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:
- (3.) The value of the chattels real of the wife which shall have vested in the husband and wife:



the husband was obliged to join his wife as a party (*d*), in the latter he need not do so (*e*). This distinction did not exist in equity; and in all cases in which the husband sought to recover the property of the wife, he had to make her a plaintiff with himself, whether the right to the property accrued before or after marriage. A wife might, however, sue by her next friend to enforce her equity to a settlement, or in respect of property belonging to her for her separate use; but when the wife sued by next friend, the husband had still to be a party, and it was usual to make him a defendant, though a husband with no adverse interest to his wife might have been made a co-plaintiff (*f*). At law, husband and wife had to be joined as defendants in all actions on contracts made by a wife before marriage, or when the wife was executrix or administratrix (*g*), and also in all actions for wrongs independent of contract committed by the wife before or after marriage (*h*). And in equity, the husband had generally to be joined where a wife had to be made defendant, even when it was sought to render her liable in respect of her separate estate.

*New rules.* The new rules as to parties do not, it is conceived, in any way affect the *law* of husband and wife, although they seem to contain a permission to depart from the practice as to joinder of parties obtaining previously, and noticed above. The most important rule is that married women may sue as plaintiffs by their next friends,

(4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:

(5.) The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person:

(6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors:

Provided that, when the hus-

band after marriage pays any debt of his wife, or has a judgment *bond fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable."

(*d*) See *Milner v. Milnes*, 3 T. R. 627, 631.

(*e*) *Bidgood v. Way*, 2 W. Bl. 1236; *Howard v. Oakes*, 3 Ex. 136; 18 L. J. Ex. 485; Dicey on Parties, 171.

(*f*) Daniel, Chan. Prac., 5th edit., pp. 85—103.

(*g*) *Mitchinson v. Hewson*, 7 T. R. 348; Dicey on Parties, 296.

(*h*) *Vine v. Saunders*, 4 Bing. N. C. 96; *Keyworth v. Hill*, 3 B. & Ald. 685.

and, by leave of the registrar, may sue or defend without their husbands, and without a next friend, on giving such security (if any) for costs as the registrar may require (*i*).

The permissive word *may* is used in this rule; and whether it were so or not, it is conceived that in the cases mentioned before (*j*), and also in cases under The Married Women's Property Act (*k*), a wife might sue alone without either husband or next friend, and without leave of the registrar (*l*). In other cases, where she has a right apart from her husband, as in those cases in which courts of equity have hitherto treated husband and wife as distinct persons, it is conceived that this rule may properly apply. So in cases where a wife is deserted by her husband, and is living apart from him, it is not improbable that the equitable rule, which has always given a wife power through a next friend to obtain any redress to which she is entitled, may be extended even to cases where the wife sues for personal injuries. But in general it is conceived that husband and wife ought to be joined as before, and that the power of the registrar to permit a married woman to sue or defend without a next friend can only be exercised in such cases as are mentioned above.

Where a married woman enters a plaint, she must state the name, and, so far as she can, the address and description of her husband; and must, unless the court otherwise orders, also procure the attendance of a next friend, who must give the same undertaking as, and incur a similar liability to, that of the next friend of an infant (*m*).

It is conceived that a husband may join in an action, in the joint names of himself and wife, for personal injury to her, a claim in his own right for consequential damage to himself (*n*).

*Bailiffs of county courts.* Actions for the acts of bailiffs, the high bailiff, or other persons acting under his orders, if the acts are done under the warrant of a registrar and under the seal of the court, must, under the circumstances more particularly detailed hereafter, be commenced against

(*i*) Order v., rule 7.

(*j*) *Ante*, p. 100.

(*k*) *Ante*, p. 100.

(*l*) See *post*, chap. xvii., where the question as to the power by a rule of practice to alter the law is discussed.

(*m*) See *ante*, p. 99, order iv., rule 10. See order viii., rule 30,

as to personal service on a married woman.

(*n*) Order vi., rule 4. This in accordance with the Common Law Procedure Act, 1852, s. 40, which, under 9 & 10 Vict. c. 95, s. 78, may, it is conceived, be applied to county courts.

the registrar, and not against the bailiff, and notice of the action must be given (*o*).

*Pauper plaintiffs.* Under the 9 & 10 Vict. c. 95, s. 78, it was held that the judges of the county courts had power to allow parties to sue *in formâ pauperis* (*p*); and as the section has not been repealed, it is conceived that the same power still exists, and that, no rules being prescribed, the practice in the high court may be followed, notwithstanding order xxxvii., rule 53.

*Ejectment.* The provisions as to parties specially applying to actions for the recovery of land are noticed in the chapter devoted to such actions.

## PART II. CHANGE OF PARTIES.

*By assignment, &c.* These provisions may conveniently be noticed here. Where there is any assignment, creation, or devolution of the estate or title of any plaintiff *before judgment*, the person to or upon whom such estate or title has come or devolved may give notice thereof to the registrar, with his name and address, together with an affidavit of the truth of the fact stated in such notice. And thereupon the registrar must cause a copy of the notice to be served by post upon the defendant in the action, and a further notice that unless upon a day named he appears and shows cause against it, the person to or upon whom such estate or title has come or devolved will be substituted for or made a joint plaintiff with the plaintiff originally named in the summons (*q*). It seems that as many copies of the notice should be delivered to the registrar by the plaintiff as there are defendants, and an additional one for the court (*r*).

Where there is any assignment, creation, or devolution of the estate or title of any defendant, the plaintiff or the defendant may in like manner give notice to the registrar, who must take proceedings thereon as prescribed in the preceding rule, and a defendant may be substituted or added, as the case may be, in the manner provided in such rule for the substitution or addition of a plaintiff (*s*).

(*o*) 13 & 14 Vict. c. 61, s. 19.  
See chap. xvii.

(*p*) See 11 Hen. 7, c. 12; *Chinn v. Bullen*, 8 C. B. 447; 19 L. J. C. P. 42.

(*q*) Order xv., rule 1.

(*r*) Order xxxvii., rule 31.

(*s*) Order xv., rule 2.

Where a plaintiff or defendant is substituted or added under these provisions, the minute-book must be altered, and all subsequent proceedings carried on under the altered title (*t*).

*By bankruptcy.* The bankruptcy of a plaintiff will not cause an action which has been commenced to abate, if it is an action maintainable by the trustee for the benefit of the creditors, and he elects to continue the action and gives security for the costs. The judge may adjourn the hearing until election is made. If the trustee does not elect to continue the action, and give security, the defendant may avail himself of the bankruptcy as a defence to the action (*u*).

*By death.* Where a *sole* plaintiff or defendant, or one or more of *several* plaintiffs or defendants, die *before* judgment, the action will not abate if the cause of action survive or continue (*v*). The old rules did not apply to the case of a sole plaintiff or defendant dying before judgment. The practice, in case of the death of a sole party, was at law governed by the Common Law Procedure Act, 1852, ss. 135, 137, and 138. And it is conceived that somewhat analogous proceedings for bringing the personal representatives before the court would be necessary in county courts, perhaps causing more expense than the bringing of a fresh action. The rule mentioned below does not at all meet the case, as, if a party died before judgment, the action could not go on to judgment until that party was represented. Where one or more of *several* plaintiffs or defendants die *after* judgment, proceedings on it may be taken by the survivor or survivors, or against the survivor or survivors, without leave of the court (*w*).

*Execution by and against person not a party.* Execution on any judgment may issue on behalf of any party not a party to the action by leave of the registrar, on proof of title to the benefit of the judgment, and upon substitution of the name of the new plaintiff, together with a statement of his derivative title for that of the original plaintiff; and the registrar must give notice (*x*) of such substitution to the defendant by post, and execution will not issue upon the judgment until the expiration of six clear days after the posting of the notice (*y*).

(*t*) Order xv., rule 3.

(*u*) 19 & 20 Vict. c. 108, s. 62.

(*v*) Order xv., rule 4.

(*w*) Order xv., rule 6.

(*x*) Form 136.

(*y*) Order xv., rule 5.

Execution or other process on a judgment will not issue against any person not a party, except a plaint upon the judgment be entered in the nature of a *scire facias*, the proceedings on which will be the same as in ordinary cases (z).

Where judgment has been given against a person deceased, his executors or administrators may be sued upon the judgment in the manner provided by the last rule (a). The meaning of this rule is not very clear, but, when interpreted with the aid of the forms, it appears to mean that when a sole defendant dies after judgment and before satisfaction of it, his executors and administrators may be sued upon it.

### PART III. NOTICE OF ACTION.

A plaintiff should in all cases, before commencing proceedings against any person, give him notice of the intention to commence proceedings, so as to give him an opportunity of settling the claim without recourse to legal process.

There are some cases, however, in which the obligation to give notice is compulsory, and the most important of these will be found noticed below.

If the plaintiff in any action where notice is thus rendered compulsory omit it, he will fail in his action.

“The words in clauses of Acts of Parliament requiring notice of action to be given in respect of anything done in pursuance of the Act, or in execution of the powers thereof, apply to all cases where the parties are intending to act upon powers given by the statute, and not merely using it as a cloak for their own private purposes (b). Those words do not mean acts done in strict pursuance of the Act, because in such a case a person would be acting legally, and would not require protection. They mean that a person, to be entitled to the protection, must *bona fide* and really believe himself to be authorised by the Act (c). Though he may erroneously exceed the powers the Act gives, or inadequately discharge the duties imposed upon him, yet if he acts *bona fide*, in order to execute such

(z) Order xv., r. 7, fms. 137, 138.

(a) *Ibid.*, rule 8.

(b) *Oakley v. Kensington Canal Co.*, 5 B. & Ad. 139; *Beechey v. Sides*, 9 B. & C. 809.

(c) *Hughes v. Buckland*, 15 M. & W. 353; *Gaby v. Wilts Canal Co.*, 3 M. & S. 589.

powers or to discharge such duties, he is to be considered as acting in pursuance of the Act, and is entitled to the protection conferred upon persons so acting (*d*). Whenever, indeed, any action is brought against any one for anything done by the order, direction, or authority of a person authorised to act in the matter, under the provisions of a public or a private Act of Parliament, it will generally be found necessary to give notice of action. It must be given in cases of non-feasance, where the person, having undertaken to act in pursuance of some statute, has failed to do what he ought to have done; as well as in cases of misfeasance, where he has acted negligently or wrongfully in the execution of the Act (*e*). The notice must state positively that an action will be brought, and must in general state the cause of action" (*f*).

*County Courts' Acts.* Actions against any person for anything done in pursuance of the Acts must be commenced within three calendar months after the fact committed; and notice in writing must be given to the defendant one month at least before action (*g*). The notice should specify distinctly the cause of action, and the court in which the action will be brought (*h*). It has been doubted whether this section applies at all to actions brought in county courts (*i*).

*Magistrates.* One calendar month's notice must also be given to a justice of the peace of the intention to bring an action for anything done in the execution of his office. The notice must be personally served or left for him at his usual place of abode (*j*). So a justice is entitled to one month's notice of action for any act done by him under the Act for the prevention of cruelty to animals (*k*).

*Special constables.* Special constables are entitled to one

(*d*) *Smith v. Wiltshire*, 2 B. & C. 620; *Smith v. Shaw*, 10 B. & C. 284.

(*e*) *Joule v. Taylor*, 7 Ex. 58; 21 L. J. Ex. 31.

(*f*) *Mason v. Birkenhead Comrs., &c.*, 6 H. & N. 72; 29 L. J. Ex. 406. The above paragraph is taken from Addison on Torts, 3rd edit., p. 754.

(*g*) See form of notice, Appendix F, form 2.

(*h*) 9 & 10 Vict. c. 95, s. 138. See a form which was held suffi-

cient in *Burton v. Le Gros*, 34 L. J. Q. B. 91, Appendix F, form 2. For an insufficient notice, see *Elstob v. Wright*, 3 Car. & K. 31; 17 L. T. 260.

(*i*) See *Partridge v. Elkington*, L. R. 6 Q. B. 82; 40 L. J. Q. B. 49; 19 W. R. 385.

(*j*) 11 & 12 Vict. c. 44, s. 9. See, as to the power to object to the jurisdiction of the county court, *post*, chap. iii., part 4.

(*k*) 12 & 13 Vict. c. 92, ss. 27, 28.

calendar month's notice of action for anything done in the execution of their duty (*l*).

*Officers of the Army, &c.* No action may be brought against any officer of the army, navy, marines, customs or excise, or against any person acting under the direction of the Commissioners of her Majesty's Customs, for anything done in the execution or by reason of his office, until one calendar month's notice in writing has been delivered to him, or left at his usual place of abode, by the attorney or agent of the plaintiff. The name and abode of the person who is to bring the action, and the name and place of abode of the attorney or agent, must be distinctly expressed in the notice (*m*).

*Corporations.* Some corporations and companies by their Acts of Parliament or deeds of settlement are entitled to notice of action. A plaintiff should therefore, before commencing any such action, ascertain whether notice is or is not required.

Generally, the cases requiring notice of action are cases in which something has been done or omitted to be done in pursuance of the powers of an Act of Parliament; but where an action is brought against a railway company for breach of duty as common carriers, a clause providing for notice of action for anything done or omitted in pursuance of their Act does not entitle them to notice (*n*).

(*l*) 1 & 2 Wm. 4, c. 41, s. 19.

(*m*) 16 & 17 Vict. c. 107, s. 313.

(*n*) *Garton v. Great Western Railway Co.*, E. B. & E. 837; 28

L. J. Q. B. 321; *Palmer v. Grand Junction Railway Co.*, 4 M. & W. 749; 1 H. & N. 489; *Carpue v. London and Brighton Railway Co.*, 5 Q. B. 747; 13 L. J. Q. B. 138.



## CHAPTER III.

### PROCEEDINGS BEFORE THE TRIAL.

- |                                                           |                                                                                                                                       |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| 1. Complaint and summons; service; particulars of demand. | 5. Counter claim.                                                                                                                     |
| 2. Judgment by default.                                   | 6. Discovery; inspection of documents; admission of ditto; proof of ditto; interrogatories; oral examinations; witnesses; affidavits. |
| by confession.                                            |                                                                                                                                       |
| by agreement.                                             | 7. Jury.                                                                                                                              |
| Discontinuance by plaintiff.                              | 8. Assessors.                                                                                                                         |
| 3. <i>Certiorari</i> ; transfer to high court.            |                                                                                                                                       |
| 4. Defences; special defences.                            |                                                                                                                                       |

#### PART I. PLAINT AND SUMMONS.

*Employment of solicitor.* It may here be conveniently noticed that any act which may be done by any party to an action according to the rules of practice, may be done by such party either in person or by his solicitor or agent, if it may be legally done by an agent (*a*). When he acts by solicitor, his solicitor must endorse on the particulars his name or firm and place of business, and state thereon whether he will accept service of proceedings on behalf of the plaintiff (*b*). Service of any proceeding or document on the solicitor, or by delivery of the same at his office, or sending it to him by post, will then be good service on such party, and the service will count as service upon the day when the proceeding or document is served or delivered, or upon which, in the ordinary course of post, it would be delivered, except in the cases when personal service on a party is required (*c*).

(*a*) Order xxxvii., rule 8.

(*b*) Order vii., rule 4. If he does not endorse the particulars with his name, &c., he will not be

allowed his costs for preparing them. See *post*, Appendix I.

(*c*) Order xxxvii., rule 9.

When a solicitor undertakes the service of any process, he must make the necessary copies of such process, and the registrar must seal and return them to the solicitor for service (*d*). Any notice relating to any interlocutory proceeding may, by leave of the registrar, be served by the solicitor of the party requiring to effect such service; but the costs of service, and proof thereof, will not be allowed except by order of the court (*e*). Where any party changes his solicitor during the course of the proceedings, he must give notice in writing of such change to the registrar, and state in it the name or firm and place of business of the new solicitor, and the registrar must file the notice (*f*). As to appearance at the trial by solicitor, see *post*, chap. v.

*Conduct of action.* The judge, or in his absence the registrar, may order what party shall have the conduct of any action or proceeding (*g*).

*Plaint.* Having ascertained the court in which to commence the action, and the persons who are to be made parties to it, and given notice of action where necessary, the proceedings by means of which the defendant may be brought before the court have next to be considered. All proceedings which were before the 2nd November, 1875, commenced by plaint are now to be called actions, and are to be commenced by plaint and summons uniformly (*h*). The exceptions appear to be those which will be found noticed in the chapter on equity jurisdiction, and certain special cases under special Acts noticed in part 2 of chap. i.

At the registrar's office a form will be supplied to any intending suitor, in which he must enter the names and last known places of abode of the intended plaintiff and defendant, and a concise statement of the substance of the cause of action (*i*). These particulars must be furnished with minuteness, as he must give the Christian-name and surname, description and residence, or place of business of himself, and the surname, and, if known, the Christian-name and description, and also (except in cases within order iv., rule 4) the residence or place of business of the defendant, and the name of the street and number of the house, if known, in which the defendant resides or carries on business. The descriptions and addresses so given will be inserted in

(*d*) Order xxxvii., rule 10.

(*g*) Order xxxvii., rule 15.

(*e*) *Ibid.*, rule 11. See *post*, chap. iv.

(*h*) Order iv., rule 1; and see order xl.

(*f*) *Ibid.*, rule 2, form 216.

(*i*) 9 & 10 Vict. c. 95, s. 59.

the process or attached to it (*j*). If the summons is one to issue which leave is required (*ante*, pp. 50, 55) under 30 & 31 Vict. c. 142, s. 1, it may issue though the plaintiff cannot give the present place of residence or business of the defendant, but in that case personal service of the summons will be necessary (*k*). No misnomer or inaccurate description of any person or place in any plaint or summons will vitiate it so long as the person or place is described so as to be commonly known (*l*).

The plaint may be entered by a solicitor acting for the plaintiff (*m*). The note containing the above particulars is then handed to the registrar, who enters them in a book (*n*): this is termed entering the plaint. A fee of one shilling in the pound must generally be paid on entering the plaint (*o*). The plaints are numbered in the book in consecutive order (*p*), and the registrar, after entry, issues to the plaintiff, his attorney, or agent, a note called the plaint-note, numbered according to the entry in the book and sealed with the seal of the court (*q*). This note forms the plaintiff's title to the fruits of his action (*r*).

If the plaintiff does not reside in England, security for costs by deposit of money or otherwise (*s*), to the satisfaction of the registrar, must be given before the plaint is entered; but where the plaint is entered by a solicitor, an undertaking by him (*t*) will be sufficient (*u*).

Where the parties agree to try an action in a county court under the provisions noticed (*ante*, p. 17) for giving jurisdiction over a claim not within the jurisdiction, a plaint must be entered and a summons issued as in ordinary cases (*v*).

*Entry of plaint through post.* Where a person desires to enter a plaint in a court within the district of which he does not reside (*w*), he may, instead of attending in person or by agent at the court, transmit, free of cost, to the registrar—(1) A *præcipe* showing the name, address, and

(*j*) Order iv., rule 3. An old rule as to describing a defendant by any name by which he was known is not again prescribed; but see *infra*.

(*k*) *Ibid.*, rule 4.

(*l*) 9 & 10 Vict. c. 95, s. 59.

(*m*) Order xxxvii., rule 8, *ante*, p. 112.

(*n*) 9 & 10 Vict. c. 95, s. 59.

(*o*) 19 & 20 Vict. c. 108, s. 78. See Appendix I.

(*p*) 9 & 10 Vict. c. 95, s. 59.

(*q*) Order viii., rule 1, forms 6 and 7.

(*r*) See *post*, chap. v., as to obtaining money out of court by production of the plaint-note.

(*s*) See, as to security, chap. vii.

(*t*) Form 44.

(*u*) Order iv., rule 2.

(*v*) Order xxxvii., rule 46.

(*w*) It was probably intended to add "or carry on business."

description (*x*) of the plaintiff and defendant, the cause of action and the amount claimed, and where the claim exceeds 40s., as many copies of his particulars of demand (*y*) as there are defendants, and an additional copy to file. (2) A post-office order (*z*) payable at the post-office of the court town, for the fees payable upon the entry of the plaint (*a*). (3) An envelope addressed to himself with a penny postage stamp upon it. Upon the receipt of these particulars, the registrar must enter the plaint and forward the plaint-note (*b*) to the plaintiff in the addressed envelope (*c*). The several districts of the metropolitan courts are to be considered *inter se* as one district for the purposes of this rule (*d*); hence a plaintiff living in one district of the metropolis cannot enter a plaint through the post against a defendant living in another district of the metropolis.

*Particulars of demand.* It has been already stated (*e*) that on entering a plaint, the plaintiff must in all cases give to the registrar a concise statement of the substance of his cause of action (*f*). In ordinary cases where the claim exceeds 40s., and in all cases where the summons is to issue for a judgment by default under 38 & 39 Vict. c. 50 (*g*), the plaintiff must, on entering the plaint, deliver to the registrar as many copies of his particulars as there are defendants, and an additional copy for the use of the judge (*h*). These particulars must be annexed to the summons before service, and will be deemed part of it (*i*). Where any plaint is entered for a plaintiff by a solicitor, he must endorse on the particulars his name or firm and place of business, and state on them whether he will accept service of proceedings for the plaintiff (*j*). Failure to observe this rule may be visited by non-allowance on taxation of the solicitor's costs of attendance (*k*). Where the demand exceeds 50*l.*, and the plaintiff desires to abandon the excess (*l*), or to admit a set-off (*m*), and sue in the

(*x*) See order iv., rule 3, *ante*, p. 113.

(*y*) See *infra*.

(*z*) This, it appears, should be made payable to the registrar or the treasurer.

(*a*) See *supra*, and Appendix I.

(*b*) See *supra*.

(*c*) Order xxxvii., rule 6.

(*d*) *Ibid.*, rule 7. See *ante*, p. 50.

(*e*) *Ante*, p. 113.

(*f*) 9 & 10 Vict. c. 95, s. 59.

(*g*) See *post*, part 2.

(*h*) Order vii., rule 1; order xxxvii., rule 31.

(*i*) Order viii., rule 4.

(*j*) Order vii., rule 4.

(*k*) See the scale of costs, Appendix I.

(*l*) *Ante*, p. 19.

(*m*) *Ante*, p. 13.

county court for the residue, the abandonment or the admission of the set-off must be entered at the end of the particulars (*n*). Where the assignee of a debt or other legal *chose in action* sues, he must state on his particulars the name and description of the assignor (*o*). In all cases of ordinary account, such as partnership, executorship, or ordinary trust accounts, where the plaintiff in the first instance desires to have an account taken, the particulars must contain a claim that such account may be taken (*p*).

For the special provisions as to particulars in actions sent for trial by order of the high court, see chap. x.; in interpleaders, chap. viii.; and in actions of ejectment, and actions in which title to land comes in question, see chap. xiii.

Where the plaintiff seeks to obtain payment, or satisfaction, or relief, redress or remedy upon more than one cause of action or claim, he must state in his particulars the grounds of each claim separately, and must also state separately the payment or satisfaction, relief, redress, or remedy, which he claims in respect of each (*q*).

*Notice for further particulars.* In all actions the defendant may, within three clear days of his being served with the summons, give notice to the plaintiff that he requires further particulars; and the plaintiff must then, within two clear days after service of the notice, file full particulars of his claim and of the relief, or remedy, to which he claims to be entitled, and within the same time must deliver to the defendant a copy thereof. These particulars must be written on paper of the description heretofore used in suits in equity, and must state as concisely as possible the material facts on which the plaintiff relies, and must be divided into paragraphs numbered consecutively, and each paragraph must contain as nearly as may be a separate allegation. Dates, sums, and numbers must be expressed in figures, and not in words. The court, in adjusting the costs of the action, must inquire, at the instance of any party, into any prolixity, and must order the costs occasioned by such prolixity to be borne by the party chargeable with the same (*r*). It is conceived that this power is not to be used oppressively, and that if a

(*n*) Order vii., rule 1.

(*o*) *Ibid.*, rule 3. See *ante*, p. 90.

(*p*) *Ibid.*, rule 2.

(*q*) *Ibid.*, rule 7. See *ante*, p. 21, as to joinder of various

causes of action, and the power of the court to order separate trials.

(*r*) Order vii., rule 8.

plaintiff has delivered full and proper particulars in the first instance, he may properly refuse to deliver any other particulars.

*The framing of particulars.* In equity actions, or complicated common law actions, the provisions above afford a good guide to the manner in which particulars should be prepared; but great particularity would appear to be unnecessary and improper in most money claims.

The object of particulars of demand is to control the generality of the claim, and to restrict the plaintiff to it at the trial, and to give the defendant such information as a reasonable man would require in order to know against what he has to defend himself, and, if necessary, to pay money into court (*s*). In case of inaccuracy in the particulars, the point to be considered is, whether or not the defendant could have been misled by them (*t*). Precision in the framing of particulars is recommended where it is possible; but it is conceived that the particulars should give the information required with as little technicality as is consistent with brevity and precision (*u*). No general forms of particulars were given in the old rules, but a number will now be found in Appendix E (*v*). Particulars of a claim by an engineer stated as "To sinking a shaft," &c., "*Cr.* Cash on account," &c., making the balance the same as the amount claimed in the summons, have been held sufficient, without showing that the shaft was sunk for the defendant, or further showing how he was sought to be made liable for the price of work and materials (*w*).

If the particulars do not disclose a cause of action within the jurisdiction, the defendant may obtain a prohibition (*x*), or at the hearing the judge ought to order the cause to be struck out (*y*). The judge cannot at the hearing amend the particulars so as to substitute a cause of action within

(*s*) *Rennie v. Beresford*, 15 M. & W. 83; 15 L. J. Ex. 78; *Kenyon v. Wakes*, 2 M. & W. 767.

(*t*) *Clarke v. Stanniciffe*, 7 Ex. 439; 21 L. J. Ex. 129.

(*u*) In a case before Pitt Taylor, C.C.J., *Alpass v. Jakeway*, 15 S. J. 137, where a species of declaration containing the ordinary indebtedness counts, and no proper particulars, had been delivered, he adjourned the case for the delivery

of fresh particulars, although the defendant did not appear.

(*v*) Form 46 *a*. For particulars of actions of tort or contract sent for trial by high court, see forms 50, 52.

(*w*) *Weillake v. Sargent*, 15 Jur. 1134.

(*x*) See *ante*, p. 72.

(*y*) 30 & 31 Vict. c. 142, s. 14. *Post*, chap. v.

the jurisdiction—*e.g.*, as by substituting false imprisonment for malicious prosecution (*z*), or without consent of the defendant, altering a claim above 50*l.* to 50*l.*, by adding an abandonment of excess (*a*); *quære*, whether he may do so with the defendant's consent (*b*), though, since the 19 & 20 Vict. c. 108, s. 23, and the 30 & 31 Vict. c. 142, s. 14, it may probably be held that he can (*c*).

If the particulars do not disclose a cause of action, the judge is justified in nonsuiting, and, it seems, ought to nonsuit the plaintiff (*d*). The subject of amendment will be treated of subsequently (*e*); but it is conceived that if the particulars do not give the defendant the information which he is entitled to, after notice under order vii., rule 8 (*f*), the judge ought not to amend, or at any rate without an adjournment on the terms of payment of costs of the day (*g*). After giving notice of defence it would appear that defendant cannot object to the *sufficiency* of the particulars (*h*). If the plaintiff wishes to amend his particulars before the hearing, it is conceived that he may do so if the defendant consents, but if he will not consent, an order of the judge would appear to be necessary (*i*).

*The summons.* From the particulars furnished by the plaintiff on entering the plaint the summons is prepared by the registrar. In case of an error by the officers of the court causing the summons to be a nullity, it would appear that the judge has power to order a new summons to issue, bearing, if necessary, the date of the first; as where a defendant, sued as executor of A, was wrongly described by the officer in the summons as executor of B, the court above, believing the first summons to be a nullity, refused

(*z*) *Hopper v. Warburton*, 32 L. J. Q. B. 104; 11 W. R. 384; 7 L. T. N. S. 722; see *ante*, p. 72. This appears still to be the case, as the ample powers of amendment in Jud. Act, order xxvii., rule 1, are not extended, and it is conceived could not be extended, except by statute, o county courts.

(*a*) *In re Hill*, 10 Ex. 726; 24 L. J. Ex. 137, *ante*, pp. 19, 72.

(*b*) *Avards v. Rhodes*, 8 Ex. 352; 22 L. J. Ex. 106; *North v. Holroyd*, L. R. 3 Ex. 69; 37 L. J. Ex. 42; 17 L. T. N. S. 57, *ante*, p. 20.

(*c*) See remarks, *ante*, pp. 18, 80.

(*d*) See *per* Blackburn, J., *Richardson v. Silvester*, L. R. 9 Q. B. 36; 29 L. T. N. S. 395; 43 L. J. Q. B. 1; 22 W. R. 74. See *post*, chap. v.

(*e*) Chap. iv.

(*f*) *Ante*, p. 116.

(*g*) See 9 & 10 Vict. c. 95, s. 75.

(*h*) *Wedlake v. Sargent*, 15 Jur. 1134. See *Jones v. James*, 19 L. J. Q. B. 257; 1 L. M. & P. 65.

(*i*) See *post*, chap. iv.



to disturb a new summons, which the judge had ordered to issue, bearing the date of the first, to save the Statute of Limitations (*j*). The summons is in the prescribed form (*k*); it bears the number of the plaint, and the date on which it was entered (*l*), and that date is deemed to be the commencement of the action (*m*). If issued by leave of the judge or registrar (*n*), it must be so stated on the summons (*o*). No misnomer or inaccurate description of any person or place in the plaint or summons will vitiate it, so long as the person or place is described so as to be commonly known (*p*). Although in the case above referred to, the error caused by the misdescription of the defendant was corrected in the manner described, it must not be supposed that a misdescription of the kind named by the plaintiff himself would have been corrected. In all probability it would have been held to be fatal. Defendants will be described in the summons as in the plaint (*q*).

The summons will direct the defendant to appear at the next court for which plaints are then being entered, or, at the request of the plaintiff, at any subsequent court (*r*). A copy of the particulars of demand, where they are required, sealed with the seal of the court, must be annexed to the summons (*s*), and they will be deemed to be part of it (*t*).

*Service of summons.* The registrar must issue the summons forthwith for service (*u*), a copy of the particulars when required, sealed with the seal of the court, being annexed. The registrar must also make and deliver to the bailiff a true copy of the summons (*v*). Summonses required to be served out of the district of the court must be served by the bailiff of the foreign district, unless the judge orders them to be served by the bailiff of his own court (*i.e.*, as it is termed, the home court) (*w*); and the service by the bailiff of the foreign district will be as effectual as if it had been made by the bailiff of the home court (*x*). When the bailiff of the foreign district is required to serve

(*j*) *Foster v. Temple*, 5 D. & L. 655; 17 L. J. Q. B. 230.

(*k*) Forms 5, 11.

(*l*) 9 & 10 Vict. c. 95, s. 59.

(*m*) Order viii., rule 2.

(*n*) *Ante*, pp. 50, 55.

(*o*) Order viii., rule 3. This was formerly not the case: *Waters v. Handley*, 6 D. & L. 88.

(*p*) 9 & 10 Vict. c. 95, s. 59.

(*q*) See *ante*, p. 113.

(*r*) Order viii., rule 5.

(*s*) Order ii., rule 7.

(*t*) Order viii., rule 4.

(*u*) Order ii., rule 4.

(*v*) *Ibid.*, rule 7.

(*w*) *Ibid.*, rule 5; 19 & 20 Vict. c. 108, s. 17.

(*x*) 9 & 10 Vict. c. 95, s. 61.

the summons, the registrar must send it and a copy with a letter in the prescribed form (*y*) to the bailiff within twenty-four hours after the plaint is entered. This is unnecessary when a summons is sent for service from one metropolitan court to another (*z*).

Where the summons is to be served in the home district, except in actions to recover land, it should, in order to ensure its service, be delivered to the bailiff at least twelve clear days, and where it is to be served in a foreign district, fifteen clear days before the return-day; but it must in either case be served at least ten clear days (*a*) before the return-day. A summons may, however, be issued at any time before the return-day on production by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the ordinary jurisdiction of the court. Service of such summons, any time before the return-day, may be deemed good service, if at the hearing the judge is satisfied on the evidence on oath before him that such party was about to remove out of the ordinary jurisdiction of the court, or of that of the court in which he resides. In every such case, whether such proof be given or not, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing (*b*). Service cannot be made on Sunday, Christmas-day, Good Friday, on the Saturday next after Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or on days on which the offices of the courts are closed under the rules or by order of the lord chancellor, but the days are counted in the computation of time (*c*).

A summons may be served within five hundred yards of the boundary of the district of the court from which the same issued by the bailiff of such court, or by order of the judge by his bailiff within the district of any other court (*d*). The metropolitan districts are practically one district for the purpose of the service of summonses *inter se* (*e*); but where a summons issues in one of such courts against a defendant in another, service must be made by the bailiff of the district within which the defendant dwells or carries on business, unless the judge specially orders otherwise. This rule is not, however, to control the general power of

(*y*) Form 10.

(*z*) Order ii., rule 5. See 19 & 20 Vict. c. 108, s. 18; 30 & 31 Vict. c. 142, s. 3, *ante*, p. 50.

(*a*) See *post*, chap. vii.

(*b*) Order viii., rule 8.

(*c*) Order xxxvii., rule 35; order i., rule 3.

(*d*) 19 & 20 Vict. c. 108, s. 17.

(*e*) See *ante*, pp. 50, 115.

service within five hundred yards of the boundary just noticed (*f*). No letter is required to be sent to the bailiff with the summons, as in other courts where service is required out of the district (*g*).

The service of an ordinary summons (*h*) must, except in the cases hereafter mentioned, be personal, or by delivering the summons to some person, apparently not under sixteen years of age, at the house or dwelling, or the place of business (the defendant being master or one of the masters) of the defendant, unless the bailiff shall ascertain that the defendant has removed to some other place within the district, in which case he shall serve the summons at such last-mentioned place (*i*). When an infant is defendant, service on his or her father or guardian, or if none, then upon the person with whom he or she resides, or under whose care he or she is, will, unless the judge or registrar otherwise orders, be good service; but the judge or registrar may order that service on the infant shall be deemed good service (*j*). Where a person of unsound mind is defendant, service on his committee, if he has one, or, if not, then on the person with whom such person resides, or under whose care he or she is, will, unless the court otherwise orders, be good service (*k*). Where partners are sued in the name of their firm, service may be made on any one or more of the partners, or at the principal place of the business in England of the partnership upon any person having apparently at the time of service the control or management of the partnership business there, and such service will be good service on the firm (*l*). Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process, upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, service may be made in the manner so provided (*m*). If the defendant is living or serving on board ship, service may be made on the person apparently in charge of the vessel at the time of service (*n*). If residing or quartered at a barracks and serving as a soldier or marine, service may be made at the barracks on the adjutant, or any officer or sergeant of the company or troop to which such soldier or marine be-

(*f*) Order viii., rule 25.

(*g*) Order ii., rule 5.

(*h*) See, as to service on solicitor, *ante*, p. 112.

(*i*) Order viii., rule 9.

(*j*) Order viii., rule 10.

(*k*) *Ibid.*, rule 11.

(*l*) *Ibid.*, rule 12.

(*m*) *Ibid.*, rule 23.

(*n*) *Ibid.*, rule 13.

longs (o). If a prisoner in gaol, service may be made at the gaol on the governor, or other person appearing to be the head officer in charge (p). If working in a mine or other works underground, service may be made at the mine or works, to the engine-man, banks-man, or other person apparently in charge of the mine or works (q). If employed and dwelling in a lunatic or other public asylum, or in any common gaol or house of correction, service may be made on the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction (r). Service on a railway company or other corporation may be made on the secretary, station-master, or clerk at any station or office within the district of the court in which the summons is to be served (s).

If the defendant keeps his house, dwelling, or place of business closed to avoid service, service may be made by affixing the summons on the door (t). If the bailiff is prevented from personal service by the violence or threats of the defendant or any person or persons in concert with him, service may be made by leaving the summons as near to the defendant as practicable (u).

Where the answers given by the person to whom an ordinary summons is delivered at the place mentioned in a summons as the residence or place of business of a defendant render it doubtful whether the court will be satisfied that service has come to the knowledge of the defendant before the return-day, the high bailiff must forthwith send notice to the plaintiff (v).

Where a defendant is out of England, the judge, or, in his absence, the registrar, may, upon an affidavit of the fact, direct the service of the plaint and summons to be effected within such time and in such manner as he may think fit (w).

*Endorsement of service.* If service has been personal, the bailiff who served it must endorse on the copy delivered to him by the registrar (x) the fact of such service. If service has not been personal, he must endorse on the copy the statement made by the person to whom the summons was delivered, or other circumstances from which it may

(o) Order viii., rule 14.

(p) *Ibid.*, rule 15.

(q) *Ibid.*, rule 16.

(r) *Ibid.*, rule 17.

(s) *Ibid.*, rule 18.

(t) *Ibid.*, rule 19.

(u) Order viii., rule 21.

(v) Order ii., rule 23, form 14.

(w) Order xxxvii., rule 12.

(x) See order ii., rule 7, *ante*,  
p. 119.

be inferred that the service has come to the knowledge of the defendant. If the summons has not been served, the bailiff must endorse such fact on the copy with the reason for non-service, and must deliver it to the registrar with the list required by rule 26; and all of such copies must be produced by the registrar or high bailiff (*y*) as the judge may require. All such endorsements must be signed by the bailiff (*z*). Seven clear days before the holding of any court, the high bailiff must deliver to the registrar a list of all ordinary summonses on plaints before judgment issued to him returnable at such court, and must state in it the mode of service, or the cause of non-service of each summons; and the high bailiff must, at the same time, unless the judge otherwise orders, deliver to the registrar the copy of every summons which has been served, and the summons itself when not served (*a*). When service of an ordinary home summons has not been effected, the high bailiff must forthwith give notice (*b*) to the plaintiff of the fact of such non-service (*c*), and he must also send notice (*d*) to the plaintiff if, under the circumstances mentioned above, it is doubtful whether the service will be held sufficient (*e*).

Service of an ordinary summons in a foreign district is made in the ordinary way, and the high bailiff of the foreign district is required, eight clear days before the return-day, to send the copy of the summons to the registrar of the home court, duly endorsed (*f*), if the summons has been served; and if not served, he must return the summons also (*g*). Where the summons is returned not served, notice (*h*) must be given forthwith to the plaintiff by the registrar of the home court (*i*); and where, by the endorsement, it appears doubtful whether the service will be held sufficient, the registrar of the home court must forthwith give notice (*j*) to the plaintiff (*k*).

*Proof of service.* Where the defendant does not appear at the hearing, the service of the summons is proved by the

(*y*) As to the union of these offices, see *post*, chap. xvii.

(*z*) Order ii., rule 21.

(*a*) *Ibid.*, rule 26.

(*b*) Form 13.

(*c*) Order ii., rule 22.

(*d*) Form 14.

(*e*) Order ii., rule 23.

(*f*) 9 & 10 Vict. c. 95, s. 62;  
38 & 39 Vict. c. 50, s. 3.

(*y*) Order ii., rule 24. For the penalty upon the bailiff of the foreign court neglecting his duty in regard to service, see order ii., rule 25, *post*, chap. xvii.

(*h*) Form 13.

(*i*) Order ii., rule 5.

(*j*) Form 14.

(*k*) Order ii., rule 6.

bailiff. In case of his unavoidable absence, service may be proved by the endorsement on the copy of the summons under the hand of the bailiff who served the summons, showing the fact and mode of service, if the judge thinks fit. Service in a foreign district may also be proved by the endorsement on the summons (*l*). The questions as to the sufficiency of the service and the proof of it are entirely matters for the county court judge, and his decision upon them will not be interfered with by the high court (*m*).

*Defendant's knowledge of service.* If the summons, though not served personally, has been delivered at the house or place of dwelling, or of business, of the defendant, and the defendant does not appear in person or by his solicitor or agent, at the hearing, the action may proceed if the court is satisfied, by the evidence on oath before it, that the service came to the knowledge of the defendant before the day of hearing. It is not, however, necessary to prove knowledge in the case of *employés* in asylums, corporations, avoiding service by keeping indoors, or by violence or threats (*ante*, p. 122) (*n*).

If service has been made in any of the modes already described, and it appears that it has come to the knowledge of the defendant less than ten clear days (*o*) before the hearing, the judge may allow the action to proceed or may adjourn it, in his discretion, whether the defendant appears or not (*p*).

So far as they relate to the mode of service, but not as to the time of service, the rules of service already mentioned in the preceding pages apply to the service of all summonses whatsoever, except where otherwise directed by statute or by the rules (*q*). (See special provisions as to ejectment, chap. xiii.; and as to default summonses, *post*, p. 127; and under Bills of Exchange Act, chap. xi.)

*Successive summonses.* Where an ordinary summons has not been served, the summons may be re-issued without entering a new plaint, unless the non-service has been caused by the fact of the defendant's having removed from the address given before the entry of the plaint, or of the plaintiff's having given a wrong or insufficient address; but

(*l*) 9 & 10 Vict. c. 95, s. 62; 38 & 39 Vict. c. 50, s. 3.

(*m*) See 9 & 10 Vict. c. 95, s. 80; *Zohrab v. Smith*, 5 D. & L. 635; 17 L. J. Q. B. 174; *Waters v. Handley*; 6 D. & L. 88; *Robin-*

*son v. Lenaghan*, 2 Ex. 333; 17 L. J. Ex. 174.

(*n*) Order viii., rule 22.

(*o*) See *post*, chap. vii.

(*p*) Order viii., rule 24.

(*q*) *Ibid.*, rule 26.

if the bailiff ascertains that the defendant has removed to some other place within the district, he must serve the summons at such other place, and endorse the new address upon his copy. Successive summonses must bear the same date and number as, and will be deemed to be a continuance of, the first issued, the date and number being written in red ink in the plaint-book. None may be issued, however, on a plaint which has been entered more than three months, except as provided by order viii., rule 7 (*r*). It is settled by the new rules that no fee for the re-issue of a default summons is required (*s*).

Where, in any of the cases in which jurisdiction is conferred on the county courts by statutes other than county court statutes, no provision is made either by rule or statute as to the mode in which the proceedings are to be commenced, it is conceived that unless the commencing of the proceeding by plaint and summons would be repugnant to the spirit of the statute and the remedy to be obtained, the proceedings should be commenced by plaint and summons in the ordinary way in accordance with the rules of practice already explained. Where the rules and statutes are silent as to practice, recourse may be had to the 9 & 10 Vict. c. 95, s. 78, which enacts that in any case not expressly provided for by the Act, or by the rules of practice, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts (*t*).

## PART II. JUDGMENTS BY DEFAULT, CONFESSION, AND AGREEMENT.—DISCONTINUANCE BY PLAINTIFF.

The preliminary steps in the suit have now been considered, and, as a general rule, the performance of the preliminaries already explained is sufficient on the part of the plaintiff to bring the defendant before the court; and the defendant has but to appear in court upon the day upon which he is summoned to appear, and is not bound to enter an appearance as in the high court; he is, however, com-

(*r*) Order viii., rule 6.

(*s*) See order viii., rule 31, *post*.

No new rules have been issued corresponding with rules 220 and 221 of the old rules relative to

summonses to save a Statute of Limitation.

(*t*) See *post*, chap. xvii., where these provisions are more fully considered.



pelled to give notice of a counter claim, and in some cases of the defence relied on.

Cases frequently arise, however, where there is no probability of any defence being raised, or where the defendant is willing to admit the debt, or where the plaintiff and defendant are able to agree as to the sum to be paid to satisfy the claim, and the manner in which it is to be paid. Facilities are afforded for obtaining, in certain cases, judgment in default of the defendant's giving notice of his intention to appear and defend the action, and judgment by confession or admission and agreement, without the necessity of having the cause tried in the usual manner. These different modes of procedure may be conveniently noticed here.

*Judgment by default (u).* A default summons (v) may now be issued without leave in all cases within the jurisdiction of the court, where the claim is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant, to be used or dealt with in the way of his trade, profession, or calling. It may also be issued without leave in cases other than those mentioned above, where the claim, being within the jurisdiction of the court, is for a debt or liquidated demand exceeding 5*l.*; but if the claim does not exceed 5*l.*, the leave of the judge or registrar is requisite (w). The summons is obtained on filing an affidavit (x) verifying the debt; and if the defendant does not give notice of defence after personal service of the summons, the plaintiff may obtain judgment (y).

In the cases in which leave is required prior to the issue of the summons, it will be granted in all cases, unless the affidavit discloses that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour (z).

At the time of entering the plaint, the plaintiff may file a notice, signed by himself or his solicitor or agent, of the time or times at which, and of the instalments, if any, by which he consents to accept payment (a). He must file as

(u) The provisions noticed in this paragraph are substituted for the former provisions under the 19 & 20 Vict. c. 108, s. 28, and the 30 & 31 Vict. c. 142, s. 2.

(v) See form of summons, form 16.

(w) 38 & 39 Vict. c. 50, s. 1.

(x) See form 15.

(y) See form 8 for plaint-note.

(z) Order iv., rule 5.

(a) Form 36.

many copies of this notice as there are defendants, and a copy of it will be annexed to the summons, and served with it. If the plaintiff neglects to file the above notice on entering the plaint, he may, nevertheless, give a similar notice on entering up judgment (*b*).

Where the plaint is entered by a solicitor, he may, on entering the plaint, deliver to the registrar a notice, signed by himself, stating that he wishes to serve the summons himself, or by some clerk or servant in his permanent and exclusive employ. If no such notice be given, the summons will be served by the bailiff. Where difficulty has been experienced in effecting service, the summons may be served, by leave of the judge or registrar, by the party himself, or some clerk or servant in his permanent and exclusive employ (*c*).

On entering the plaint, in all cases, whether the claim is above 40s. or not, the plaintiff must file particulars of his demand with the registrar (*d*); and a copy will then be annexed to the summons, sealed with the seal of the court (*e*). The summons must be personally served on the defendant by one of the persons mentioned above; but if personal service cannot be effected, and the judge or registrar is satisfied by affidavit (*f*) that reasonable efforts have been made to effect service, and that the summons has come to the knowledge of the defendant, or that he wilfully evades service, the judge or registrar may order that the plaintiff may proceed as if personal service had been effected, subject to such conditions as may be thought fit (*g*). The summons may be personally served in any district in which the defendant may be met with (*h*), and service must be made within six months from the date of issue (*i*). Unless the time for service has been extended, the entry of a default summons not returned to the registrar within six months from the date of issue will be struck out of the plaint-book (*j*). When personal service is required on a married woman sued jointly with and living with her husband, service on the husband will be good service on the wife; but the judge or registrar may order that she may be personally served as well as the husband (*k*). If any defendant named in a default sum-

(*b*) Order iv., rule 8.

(*c*) *Ibid.*, rule 6.

(*d*) Order vii., rule 1, *ante*,  
p. 115.

(*e*) Order ii., rule 7.

(*f*) Form 34.

(*g*) 38 & 39 Vict. c. 50, s. 1,  
form 35.

(*h*) Order viii., rule 28.

(*i*) *Ibid.*, rule 27.

(*j*) *Ibid.*, rule 29.

(*k*) *Ibid.*, rule 30.

mons is not served within twelve months, the plaintiff may, before the expiration of that period, apply to the registrar; and if he is satisfied that reasonable efforts have been made to serve such defendant, or that some other good reason for it exists, he may issue a successive summons, without fee, for a further period of six months, and so on from time to time; and the successive summonses will be a continuance of the action on and from the day on which the plaint was entered (*l*). When served in due time to prevent the operation of a Statute of Limitations, and either party dies after service, and after the lapse of the period within which the action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representatives of the deceased party, within one year from the day of service of the summons (*m*). The high bailiff of a foreign court must send notice of service within two days after service, and return the summons duly endorsed to the registrar of the home court. If it cannot be served within a month of its date of issue, notice must be sent to the plaintiff, and so at the end of each month during which it is not served (*n*).

Service of the summons, when served by a bailiff, will be proved in the ordinary way (*o*); but if service has been made by a solicitor, or his clerk or servant, a copy of the summons, together with an affidavit of the service, must within the next three clear days be delivered or transmitted to the registrar of the court issuing the summons, who must forthwith file the same (*p*).

The defendant may, after service of the summons, whether he has any real defence or not, give notice of his intention to defend, or he may object to the jurisdiction of the court, on the ground that no part of the goods sold to him were to be dealt with by him in the way of his trade, profession, or calling (*q*). He may also, it is conceived, avail himself of any of the provisions noticed hereafter (*r*), applicable to the claim in the action. The notice of defence or objection to jurisdiction must be signed by the defendant or his solicitor, and must be delivered to the registrar within sixteen days after service of the summons, inclusive of the day of service. If the defendant neglects to give notice, he may, nevertheless, on an affidavit dis-

(*l*) Order viii., rule 31.

(*m*) *Ibid.*, rule 32.

(*n*) Order ii., rule 27, form

(*o*) See *ante*, p. 123. For notice of service, see form 18.

(*p*) Order iv., rule 7. [132.

(*q*) See form 16. (*r*) *Post*, p.

closing a defence upon the merits, and satisfactorily explaining his neglect, be allowed, on terms, by the judge or registrar to defend (*s*). In default of such notice or leave to defend, the plaintiff may, after sixteen days and within two months from the day of service, upon proof, in the mode described above, of the service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, the costs being taxed by the registrar. The order upon the judgment will be for payment forthwith, at such time or times, and by such instalments, as the plaintiff or his solicitor may have consented to under the rule above mentioned (*t*). No order need be drawn up or served on judgment being entered up (*u*). The judgment may not be signed or entered up after two months from the date of service of the summons (*v*).

If notice of defence be given, the registrar must, immediately on receipt of it, send a letter to the plaintiff or his solicitor by post, stating that the defendant has given notice of his intention to defend, and he must also send by post to both parties notice of the day fixed for the trial, at least six days before such day (*w*). The trial after notice of defence takes place in the ordinary way. If neither plaintiff nor defendant appears on the day of trial, the action will be struck out; if the defendant appears and the plaintiff does not, the action will be struck out, and costs will be given against the plaintiff; where the plaintiff appears and the defendant does not, judgment may be entered for the plaintiff without further proof (*x*); and if both parties appear, no proof of service of the summons will be necessary (*y*).

A default summons which has not been served, may, at the request of the plaintiff, be exchanged without fee for an ordinary summons, upon the former being filed in court within one month from the date of its issue (*z*).

*Judgment by confession under 13 & 14 Vict. c. 68, s. 8.* If the defendant admits the plaintiff's claim, he may save half of the hearing fee and any subsequent costs by signing

(*s*) 38 & 39 Vict. c. 50, s. 1.

(*t*) *Ibid.*

(*u*) Order xviii., rule 3.

(*v*) Order viii., rule 31.

(*w*) 38 & 39 Vict. c. 50, s. 1,  
form 19.

(*x*) Order xvi., rule 6.

(*y*) *Davis v. Pearce*, L. R. 5

C. P. 435; 18 W. R. 736; 22 L. T.

N. S. 441, decided under 30 & 31

Vict. c. 142, s. 2.

(*z*) Order xxxvii., rule 1.

a form of confession (*a*) that the amount claimed is due to the plaintiff, and delivering it to the registrar five days before the day of hearing. It must be signed in presence of a solicitor, or of the registrar, or his clerk, who must attest the signature. The confession may also be delivered to the registrar any time before the cause is called on, but the defendant will then be liable for any further costs which may have been incurred by reason of the delay (*b*). The defendant may also add to his confession an offer to pay the amount by instalments. Notice of the confession is sent by the registrar to the plaintiff by post or by delivery at his usual place of abode or business (*c*), and no proof of the claim is then required. Upon proof of the signature of the defendant on the return-day by the registrar or his clerk, or by affidavit (*d*) of the solicitor, if the confession was signed in the presence of one, the judge will give judgment for the plaintiff as if the action had been tried before him (*e*). The plaintiff need not appear at the hearing, unless the defendant has proposed to pay the amount confessed by instalments, and he objects so to receive it. The plaintiff must, however, see that the fees are paid before the day of hearing according to the notice sent to him by the registrar (*f*).

The defendant may also in the same manner confess a part of the debt only, but unless the plaintiff consents to accept it as a satisfaction, the entire claim will have to be proved in the ordinary manner (*g*).

*Confession of judgment in other cases.* Where a defendant wishes to admit the truth of the statement in the plaintiff's particulars, and to submit to the judgment of the court, he may, at any time before the return-day, in the presence of any registrar, or of one of his clerks, or of a solicitor, sign an admission (*h*); and the signature of the defendant must be verified by affidavit (*i*) unless signed in the presence of a registrar, or one of his clerks, and the admission must be filed at least five clear days before the return-day. The registrar must send a copy of the admission by post to the plaintiff or his solicitor, and the plaintiff will not, unless the judge otherwise orders, be allowed any costs incurred after service of such admission in relation to the proof of the

(*a*) Form 26.

(*b*) Order xxxvii., rule 44.

(*c*) Forms 28 and 29.

(*d*) Form 27.

(*e*) 13 & 14 Vict. c. 61, s. 8.

(*f*) Forms 28 and 29.

(*g*) See Form 26.

(*h*) Form 197.

(*i*) Form 198.

matter so admitted; but the plaintiff or his solicitor will be entitled, notwithstanding the admission, to his costs of attending on the day of trial to enter up judgment and tax his costs (*j*). This rule appears to be framed with a view to extending the power of confessing judgment to other cases than common law cases, but it is conceived that the rule was hardly necessary.

*Judgment by agreement.* If the plaintiff and defendant can agree as to the amount of the debt or demand due, and the terms or conditions upon which the same shall be paid or satisfied, and before the hearing sign a memorandum (*k*) of the agreement in presence of the registrar, or his clerk, or of a solicitor, the matter need not go into court, and half the hearing fee will be saved. If the agreement is executed in the presence of a solicitor, the signatures of the parties must be verified by affidavit (*l*). The agreement and the affidavit, when necessary, must be delivered to the registrar, who must then enter up judgment for the plaintiff for the amount of the debt or demand agreed upon, and upon the terms and conditions mentioned in the memorandum; and the judgment will have the same effect, and be enforced and enforceable in the same manner, as if it had been a judgment of the judge (*m*). The parties may also agree to the amount of the plaintiff's costs, besides court fees, and in such case the amount of the plaintiff's costs must be stated separately (*n*).

*Fees.* A fee of one shilling in the pound is payable upon every judgment by default, by confession, or by agreement (*o*).

*Discontinuance of action.* The plaintiff may, for different reasons, after having commenced his action, think it desirable to discontinue it entirely or against some party only, before the day of trial. In that case he must give notice in writing (*p*) to the registrar, who must then send notice, by post or otherwise, to the party or parties as to whom the plaintiff so desires to discontinue the action. Such party will not then be entitled to any further costs than those incurred up to the receipt of the notice, unless the court otherwise orders (*q*). After such discontinuance,

(*j*) Order xii., rule 3.

(*k*) Form 30.

(*l*) Form 31.

(*m*) 13 & 14 Vict. c. 61, s. 9.

(*n*) Order xxxvii., rule 45.

(*o*) 19 & 20 Vict. c. 108, s. 78.

See Appendix I.

(*p*) See form 4, Appendix F.

(*q*) Order xii., rule 1.

the defendant may apply for an order against the plaintiff for the costs incurred before the receipt of the notice, and of attending the court on the return-day to obtain the order (*r*).

### PART III. CERTIORARI, AND TRANSFER TO HIGH COURT.

After commencement of an action against a defendant, and service of the summons upon him, it is open to him, in certain cases, to obtain the removal of the plaint into the high court, and thus terminate the proceedings in the county court. This is effected by means of a writ of *certiorari* (*s*)—an old common law writ, which, it is conceived, will now issue out of all divisions of the high court (*t*). The object of the *certiorari* is to transfer to the high court an action which, for various reasons to be explained hereafter, may be deemed fit and proper to be tried in the high in place of a county court. A power to object to the jurisdiction of the county courts in cases where a claim exceeds a certain sum is also given by the County Courts' Acts (*u*); but as these provisions extend only to cases where the claim exceeds a certain sum, it may often be advisable to apply for a writ of *certiorari*. Where both methods are available for putting an end to the cause in the county court, the simpler course is to object to the jurisdiction, and not to apply for a *certiorari*, as, except when applied for on behalf of the Crown, the writ is not granted of course, but *ex debito justitiæ* (*v*), whilst the power to object is absolute. It is, however, to be noticed that, where the claim exceeds 5*l.*, the judge of the high court has an absolute discretion as to the terms to be imposed, and that, whilst security for the amount of the claim and costs must be given where the jurisdiction is objected to, it will depend on the facts before him whether the judge will grant the *certiorari* on the terms of the defendant's giving security for either claim or costs. It will be seen (*w*) hereafter that when the jurisdiction is objected to, the plaintiff must begin *de novo* by issuing his writ in the high court. When a *certiorari* is granted, the plaintiff does not issue a writ, but under the late practice

(*r*) Order xxxvii., rule 23.

(*s*) See *Symonds v. Dimsdale*,  
2 Ex. 533; 17 L. J. Ex. 247.

(*t*) See *ante*, p. 2.

(*u*) *Post*, p. 137.

(*v*) See *Reg. v. Justices of Surrey*, L. R. 5 Q. B. 466; 39 L. J. M. C. 145.

(*w*) *Post*, p. 138.



proceeded at once to declare, reciting the proceedings in the county court, and the issue of the *certiorari* (*x*).

The power of the high court to issue the *certiorari* is limited by statute (*y*). Where the claim exceeds 5*l.*, the writ can only issue by leave of the court or a judge, in cases which appear fit to be tried in the high court, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as may be thought fit (*z*). When the amount does not exceed 5*l.*, the *certiorari* may issue, if the court or judge thinks it desirable that the action should be tried in the high court, upon the terms of the defendant giving security to be approved by one of the masters of the high court, for the amount of the claim and the costs of the trial, not exceeding in all 100*l.*, and upon his further assenting to such terms as the court or judge may think fit to impose (*a*). When security has to be given, money may be deposited instead (*b*).

Where the bailiff of a county court entered two complaints, one for 5*l.* for an assault, and the other for 5*l.* as a fine under the 9 & 10 Vict. c. 95, s. 114, for assaulting him in the execution of his duty, the assault complained of being the same in both complaints, it was held that these were two distinct complaints, and could not be removed under the provisions first noticed (*c*).

*When the writ will not lie.* The writ cannot be granted where the matter in dispute is one over which the high court has no jurisdiction (*d*). Before the Judicature Acts, when a complaint was entered for the whole or part of the unliquidated balance of a partnership account, or for the amount of a distributive share of an intestacy, or for a legacy under a will, the *certiorari* would not lie; but it is conceived that, as there is now but one high court, it would now do so (*d*). It is conceived that it will not lie to remove a complaint in a matter wherein the county court has exclusive jurisdiction (*e*), nor to remove an action the particulars of which disclose a cause of action not within the jurisdiction

(*x*) See *Ashley v. Ashley*, 17 L. T. N. S. 265; Bul. & L., 3rd edit., p. 33.

(*y*) 9 & 10 Vict. c. 95, s. 90; 19 & 20 Vict. c. 108, s. 38. These powers are unaffected by 13 & 14 Vict. c. 61, s. 16; *Parker v. Bristol and Exeter Railway Co.*, 6 Ex. 184; 20 L. J. Ex. 112; *Brookman v. Wenham*, 2 L. M. & P. 233; 20 L. J. Q. B. 278.

(*z*) 9 & 10 Vict. c. 95, s. 90.

(*a*) 19 & 20 Vict. c. 108, s. 38.

(*b*) *Ibid.*, s. 71. See, as to security, *post*, chap. vii.

(*c*) *Box v. Green*, 9 Ex. 503; 23 L. J. Ex. 219.

(*d*) *Rees v. Williams*, 7 Ex. 51; 21 L. J. Ex. 24. See *post*, chap. xv.

(*e*) See *ante*, pp. 7, 11.

of the county court, the proper remedy in the last case being by prohibition (*f*). A justice of the peace who has objected to be sued in the county court, under the provisions noticed hereafter (*g*), cannot afterwards remove the plaint by *certiorari* (*h*). The writ will not lie to remove interpleader proceedings from a county court (*i*).

*Grounds for granting.* It seems that the Crown may of right obtain the removal by *certiorari* of any plaint affecting the revenue (*j*).

That difficult questions of law are likely to arise on the trial is a ground for granting the writ (*k*); and where a plaint was removed on an affidavit that difficult questions of law were likely to arise, the court refused to quash the writ, though counter affidavits were made that no such difficult questions would arise (*l*). But where the claim was under 20*l.*, a *certiorari* was refused, though it was sworn that various nice questions of law and fact, important to the applicant, would probably arise (*m*). It is conceived that the fact of the plaintiff being an officer of the court would be a ground which would be entertained (*n*), but as there is now ample power to change the venue (*o*), it would hardly be of much weight alone.

*Practice.* The application for the *certiorari* must be supported by affidavit intituled in the division of the high court to which it is intended to remove the cause, but not in any cause or matter (*p*). The affidavit must be drawn in the first person and be divided into paragraphs; each paragraph must be numbered consecutively, and must be confined as much as possible to a distinct portion of the subject (*q*). All the material facts of the case should be stated in the affidavit, and the real position of the cause should be shown in order that the judge may see what terms ought to be imposed (*r*). It is conceived that the grounds upon which

(*f*) *Ante*, p. 70.

(*g*) *Post*, p. 139.

(*h*) *Weston v. Sneyd*, 1 H. & N. 703; 26 L. J. Ex. 161.

(*i*) *Ex parte Summers, In re McKillar v. Summers*, 18 Jur. 522.

(*j*) *Mountjoy v. Wood*, 1 H. & N. 58; 27 L. T. 82.

(*k*) See *Longbottom v. Longbottom*, 8 Ex. 203; 22 L. J. Ex. 74; *Hunt v. Great Northern Railway Co.*, 2 L. M. & P. 268.

(*l*) *Rees v. Williams*, 7 Ex. 51; 21 L. J. Ex. 24.

(*m*) *Solomon v. London, Chatham, and Dover Railway Co.*, 10 W. R. 59.

(*n*) *Bow v. Green*, 9 Ex. 503; 23 L. J. Ex. 219.

(*o*) 19 & 20 Vict. c. 108, s. 22, *post*, chap. iv., part 2.

(*p*) *Ex parte Nohro*, 1 B. & C. 267; *Reg. v. Walworth*, 4 D. & L. 403.

(*q*) *Reg. Gen. M. V.* 1854.

(*r*) *Parker v. Bristol and Exeter Railway Co.*, 6 Ex. 184; 20 L. J. Ex. 112.

the writ is applied for ought also to be clearly stated in the affidavit; but where it was not stated what questions of law were likely to arise, nor the nature of them, the court refused to set aside the writ, as it was not shown that the judge had not inquired into the matters of law likely to arise (*s*).

The application should, except under particular circumstances, be made to a judge at chambers, and not to the full court (*t*). The application may be made, it is conceived, to a master of the Queen's Bench, Common Pleas, or Exchequer divisions, or to a district registrar (*u*). The application may be *ex parte*; and if the judge thinks fit to grant it on an *ex parte* application, the writ will be valid (*v*). When made *ex parte*, the rule or order is absolute in the first instance (*w*). The party obtaining the writ *ex parte* must lodge it with the registrar of the county court, and give notice that the writ has issued to the opposite party, two clear days at least before the day fixed for the hearing; and in default of his so doing, the judge of the county court may, in his discretion, order the party who obtained it to pay all the costs of the day, or so much thereof as he thinks fit, unless the high court or a judge shall have made an order respecting such costs (*x*).

Where a rule or summons is obtained to show cause why a *certiorari* should not issue, it should be served without delay. The grant of the rule or summons will, if the high court or judge so direct, operate as a stay of proceedings until the determination of the rule or summons, or until the high court or judge shall otherwise order. The judge of the county court must from time to time adjourn the hearing until such determination or such order; but if the copy of the rule or summons be not served on the opposite party and the registrar two clear days before the day fixed for the hearing, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all costs of the day, or so much thereof as he thinks fit, unless the high court or judge has made some order respecting such costs (*y*).

(*s*) *Golding v. Cundwell*, 2 L. M. & P. 175.

(*t*) *Robertson v. Womack*, 1 L. M. & P. 490; 19 L. J. Q. B. 367; *Bowen v. Evans*, 3 Ex. 111; 18 L. J. Ex. 38.

(*u*) Jud. Act, order liv., rules 1, 2; order xxxv., rule 4.

(*v*) *Symonds v. Dimsdale*, 2 Ex. 533; 17 L. J. Ex. 247.

(*w*) *Dowding v. Great Western Railway Co.*, 3 Jur. N. S. 1130.

(*x*) 19 & 20 Vict. c. 101, s. 41, form 106.

(*y*) *Ibid.*, s. 40, form 105.

If any division of the high court, or any judge thereof, refuses the writ, no other division or judge may grant it; but this provision does not affect any right of appeal, or prevent a second application to the same court or judge upon grounds different from those upon which the first application was founded (*z*), so an appeal lies from the decision of a judge at chambers to a divisional court. And if the writ be issued where it does not lie, the court will quash it (*a*).

When the writ is granted, the applicant should at once complete his security according to the terms imposed, as the judge of the county court is justified in disobeying the writ until the security has been completed. Neglect to complete the security is, however, no ground for quashing the writ (*b*).

The delivery of the writ to a person acting as clerk in the public office of the county court is a sufficient service on the judge, but not for the purpose of an attachment for contempt, where it does not come to his knowledge until after the return-day. It seems that where personal service has not been effected on the judge, he should be ruled to return the writ (*c*). If the judge after due service disobeys the writ, though by mistake, and not wilfully, the remedy is by attachment (*d*).

A plaintiff is not bound to follow the action into the high court; so where a plaint for a claim not exceeding 5*l*. was removed by *certiorari*, it was held that the defendant, after notice to the plaintiff to declare, was not entitled to sign judgment, and could not obtain from the plaintiff the costs of removing the plaint (*e*).

When the writ is granted, the costs in the court below will be costs in the cause (*f*).

*Transfer to high court under Judicature Acts.* It has been already stated (*g*) that where, by reason of the combination of legal and equitable remedies, defences, and counter claims, any defence or counter claim in any action involves matter beyond the jurisdiction of the court, the high court, or any division or judge thereof, may order the

(*z*) 19 & 20 Vict. c. 101, s. 41.

(*a*) *Rees v. Williams*, 7 Ex. 51; 21 L. J. Ex. 24.

(*b*) *Munjean v. Wheatley* (1), 20 L. J. Ex. 106. As to security, see *post*, chap. vii.

(*c*) *Brookman v. Wenham*, 2 L. M. & P. 233; 20 L. J. Q. B. 278.

(*d*) *Munjean v. Wheatley* (2), 6 Ex. 88; 20 L. J. Ex. 108.

(*e*) *Garton v. Great Western Railway Co.*, 1 E. & E. 258; 28 L. J. Q. B. 103.

(*f*) Reg. Hil. Term, 1853, 117.

(*g*) *Ante*, p. 2.

whole proceeding to be transferred to the high court, or to any division of it. The power to make the order of transfer is entirely discretionary, and may be made on the application of any party to the proceedings (*h*). It is conceived that, by analogy to the proceedings, in case of an application for a *certiorari*, the application should in the first instance be made at chambers, and the practice in such cases followed as nearly as possible (*i*). After the making of the order, the record of the proceeding—*i.e.*, such documents as may be in the control of the officers of the county court—must be transmitted by the registrar to the proper officer of the high court, and the action will then proceed in the high court as if it had been originally commenced in the high court (*h*).

Where an order is made under the above provisions of the Judicature Act, or under the 28 & 29 Vict. c. 99, s. 3 (*j*), then, subject to such order, the record in the proceeding must be transmitted by the registrar in the following manner: The registrar must make and certify under his hand office copies of all entries of record in the books of the court, and must forthwith transmit, by post or otherwise, such copies, together with all such documents as have been filed in the action, to the proper officer of the high court. The copies and the cost of transmission must be paid for by the party on whose application the transfer has been made; and the registrar may require deposit of the costs of making such copies and transmission before making or transmitting the same (*k*).

#### PART IV. DEFENCES.

Should the defendant be unwilling to avail himself of any of the modes already mentioned of terminating the suit, and should the plaintiff not discontinue, the defendant will have to consider the nature of his defence, and whether or not it falls within any of the cases where notice is requisite. These cases will now be considered.

*Objection to jurisdiction.* If in any action of contract the plaintiff claims more than 20*l.*, or in any action of tort more than 5*l.*, and the defendant prefers having the cause tried in the high court, he may give notice (*l*), personally

(*h*) 36 & 37 Vict. c. 66, s. 90.

(*i*) *Ante*, p. 134.

(*j*) See chap. xiv.

(*k*) Order xx., rule 7.

(*l*) Form 76.

or by post, to the registrar and the plaintiff, five clear days (*m*) before the hearing, that he objects to the action being tried in the county court. He must give security, to be approved by the registrar, for the amount claimed and the costs of trial in the high court, not exceeding in the whole 150*l.* (*n*), and the proceedings in the county court will then be stayed. In the notice already mentioned, he must name the parties whom he proposes as sureties, or state his willingness to deposit money instead. If he fail to give the security or make the deposit before the return-day, the cause will be disposed of in the county court in the usual manner (*o*).

The entry of the plaint in the action will be a sufficient commencement of the suit to prevent the operation of any Statute of Limitation applicable to the claim (*o*).

When notice of objection and due security have been given, the proceedings in the county court are at an end, and the plaintiff must begin *de novo* by issuing a writ in the high court, the pleadings in the action being the same as in ordinary actions in such court (*p*). No provision is made limiting the time in which the action is to be brought; but in cases where money has been deposited instead of giving security by bond, it may be often important to know when and how the money may be obtained out of court. It may be concluded without much hesitation that the defendant will be entitled to be repaid his money, unless the plaintiff proceeds in a reasonable time; but what is a reasonable time may probably be a matter of difficulty. The course suggested by the author is, that if within three months from the date of the notice of objection the plaintiff should not have brought his action in the high court, the defendant should give notice to the registrar of the county court, and to the plaintiff, of his intention to move the court for an order that the money deposited be paid out to him. The notice of motion should be served a reasonable time before the day on which motion is to be made. The

(*m*) As to the computation of clear days, see *post*, chap. vii.

(*n*) For form of bond, see form 77. The questions arising as to security will be treated of in chap. vii. See *Young v. Brompton*, 1 B. & S. 675; 31 L. J. Q. B. 14; 10 W. R. 57, decided under this section.

(*o*) 19 & 20 Vict. c. 108, s. 39; order ix., rule 5.

(*p*) See *Flitters v. Alfrey*, L. R. 10 C. P. 29; 44 L. J. C. P. 10, 73; 31 L. T. N. S. 878, 881. In this case a rule for costs was refused, although the defendant objected to the jurisdiction, and the plaintiff was compelled to proceed in the superior court, and recovered there 5*l.* in an action of tort. See *ante*, p. 61.

evidence of the neglect to bring the action, it is conceived, might be properly given orally or by affidavit of the defendant; but in the event of the intention to use the affidavit, a copy should be served on the registrar and the plaintiff, with the notice of motion; and it should be stated in the notice that the affidavit will be used on the hearing of the motion.

The above provisions as to objecting to the jurisdiction differ from prohibition. It is only by means of the notice given by the defendant that the cause, if within the ordinary jurisdiction, becomes one over which it has no jurisdiction. Prohibition would only lie if, after such notice and giving security (*q*), the court entertained the cause (*r*). The power to remove by *certiorari* is not taken away or interfered with by these provisions (*s*).

*Objection by justices.* If an action be brought in a county court against a justice of the peace (by virtue of the general jurisdiction as to personal actions) for anything done by him in the execution of his office, he may, within six days after service of the summons, himself, or by his solicitor or agent, give notice in writing to the plaintiff that he objects to being sued in the county court for such cause of action. All subsequent proceedings in the county court will then be null and void (*t*). After giving notice of objection, the justice is not entitled to remove the plaint by *certiorari* into the high court (*u*). The above provisions appear to be general, and would probably apply to actions commenced against justices for anything done under the Act for the prevention of cruelty to animals (*v*).

As to objection by defendants against whom a default summons has issued, see *ante*, p. 128.

*Statement of defence.* The defendant is not, except in the cases to be presently mentioned, compelled to put in any statement of his defence, and in simple cases of contract or tort it would often be of no assistance to the court or to the plaintiff if he did so; but where facts are complicated, and his admissions would facilitate the trial of the action, it will now be necessary for him to consider

(*q*) See the decisions in the chapters on Security and Appeal, as to non-completion of security, through the default of the court or the respondent.

(*r*) As to prohibition, see *ante*, p. 70.

(*s*) 19 & 20 Vict. c. 108, s. 39. As to *certiorari*, see *ante*, p. 132.

(*t*) 11 & 12 Vict. c. 44, s. 10.

(*u*) *Weston v. Sneyd*, 1 H. & N. 703; 26 L. J. Ex. 161.

(*v*) 12 & 13 Vict. c. 92, ss. 27, 28. See *ante*, p. 56.



whether or not he will put in a statement, so as to avoid the consequences which may ensue in the deprivation of costs under the following rule if he do not. This rule provides that he may file a statement disclaiming any interest in the subject-matter of the action, or admitting or denying any of the statements in the plaintiff's particulars, or raising any question of law on such statements without admitting the truth of them; or he may state concisely any new fact or document upon which he intends to rely as a defence, or to bring to the notice of the court; and a copy of it must be transmitted by the registrar to the plaintiff. In exercising his discretion as to costs, the judge must consider the fact of a defendant having or not availed himself of the powers given by this rule (*w*). The defendant will have to file the statement with as many copies as there are plaintiffs, and an additional copy for the use of the judge (*x*). It is conceived that the statement should be concise, and that admissions proper to be made should be made in it. These provisions differ from those already mentioned, enabling defendants to confess judgment in a particular manner (*y*).

*Special defences.* The defendant may not at the hearing, without the consent of the plaintiff, set up a set-off or other particular matter mentioned below as a defence to the action, unless, five clear days (*z*) before the return-day, he has filed with the registrar a notice (*u*) stating his intention to rely on such defence; and he must deliver to the registrar, in addition, as many copies of the notice as there are plaintiffs, and an additional copy for the use of the judge (*b*); and the registrar must, within twenty-four hours from the time of receiving the same, send one of the copies to each of the plaintiffs, either by post or by delivery, at his usual place of abode or business (*c*). At the hearing it is not necessary for the defendant to prove that the notice was communicated by the registrar to the plaintiff (*d*). It is not provided, either by the rules or the statutes, for the event of the registrar omitting to send notice to the plaintiff; but it is conceived that it would be such a default of the court as would entitle the plaintiff to an adjournment for the purpose of bringing evidence to rebut the

(*w*) Order xii., rule 2.

(*x*) Order xxxvii., rule 31.

(*y*) See *ante*, p. 129.

(*z*) See *post*, chap. vii.

(*u*) In practice the notice is frequently sent by post and al-

lowance made for the time occupied in transmission.

(*b*) Order xxxvii., rule 31.

(*c*) 9 & 10 Vict. c. 95, s. 76; order ix., rule 7.

(*d*) 9 & 10 Vict. c. 95, s. 76.

defence, without payment of the costs of the day. In case of non-compliance by the defendant with the rules applying to notice of grounds of defence, the judge may, on such terms as he thinks fit, adjourn the hearing of the cause to enable the defendant to give such notice (*e*).

By giving notice of defence, the defendant waives an irregularity in the process—*e.g.*, the insufficiency of particulars, or an error in the summons (*f*); and *quære*, whether, since the provisions for giving jurisdiction by the parties, an absolute effect in the jurisdiction would not be cured by such notice (*g*). The defences above referred to are contained in the next seven paragraphs, matters peculiar to each head of defence being mentioned in the paragraph particularly relating to it.

*Set-off.* Where the defendant intends to rely on a set-off of any debt or liquidated money demand, he must deliver to the registrar with his notice (*h*) as many copies of the particulars of such set-off as there are plaintiffs, and an additional copy to be filed (*i*); and the same will be sealed with the seal of the court and attached to the notice of defence and sent to the plaintiff (*j*). If the defendant gives imperfect notice of set-off, and is precluded from proving it at the hearing through his non-compliance with the rules, he may, nevertheless, afterwards bring his action and recover the amount (*k*).

*Infancy.* The defendant, in giving notice of the defence of infancy, must set forth in his notice the place and date of his birth, so far as he is able (*l*).

*Married women.* Where the defence is coverture, the defendant must set forth in the notice, so far as she is able, the place and date of marriage, and the Christian-name and surname of her husband, and his address and description so far as known (*m*).

*Statute of Limitations.* Notice that a defendant intends to rely on the defence of any Statute of Limitations must

(*e*) Order ix., rule 7.

(*f*) *In re Jones*, 1 L. M. & P. 65; 19 L. J. Q. B. 257; *Winsor v. Dunford*, 12 Q. B. 603; 18 L. J. Q. B. 11; *Wedlake v. Sargent*, 15 Jur. 1134; *Knowles v. Holden*, 24 L. J. Ex. 223, *per Parke*, B.

(*g*) See *ante*, pp. 78, 80.

(*h*) Form 59.

(*i*) Order ix., rule 8; order xxxvii., rule 31.

(*j*) See form 59.

(*k*) *Stanton v. Styles*, 5 Ex. 578; 19 L. J. Ex. 336.

(*l*) Order ix., rule 9, form 60.

(*m*) *Ibid.*, rule 10, form 60.

state the date from which he relies that the statute began to run (*n*).

*Bankrupts.* Where the defendant intends to rely on the defence of a release under any statute relating to bankrupts, or for the relief of insolvent debtors, he must set forth in his notice the date of his certificate, discharge, or final order, and the court by which it was granted or made (*o*).

*Libel or slander.* Where the defendant, in any action for libel or slander, relies as a defence upon the fact that the libel or slander is true, he must set forth in his notice that the libel or slander complained of is true in substance (*p*). If he relies upon an apology, or payment into court and apology under the provisions of the statute 6 & 7 Vict. c. 96, ss. 1 and 2, he must give notice in writing (*q*), signed by himself or his attorney (*r*).

*Equitable defence.* Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief upon any equitable ground against the claim of the plaintiff, or any part of it, he must, five clear days before the return-day, file a concise statement of the estate or right which he so claims, and must show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence (*s*). The power to entertain equitable defences under the 17 & 18 Vict. c. 125, s. 83, was enjoyed by county courts before the passing of the Judicature Acts; but the value of the power was much diminished by being limited to those cases in which a court of equity would have granted an absolute and unconditional injunction (*t*). There is no such limit to the present provisions, which, deriving their power from the Judicature Act (*u*), enable a defendant to defeat the claim of a plaintiff by any equitable defence whatsoever. Such a defence must not be confounded with counter claim. It is conceived that where the facts relied on go to *defeat* the actual claim of the plaintiff, whether by

(*n*) Order ix., rule 11, form 60.

(*o*) *Ibid.*, rule 12, form 60.

(*p*) *Ibid.*, rule 13, form 60.

(*q*) Forms 61 and 62. As to payment into court, see *post*, p. 144.

(*r*) Order xx., rule 4. The cases mentioned in this paragraph can only arise when the parties agree to give the court jurisdic-

tion, or when an action is remitted for trial by the high court. See chap. x., *post*, on this point. It is conceived that the practice is the same in both cases.

(*s*) Order ix., rule 15.

(*t*) *Wood v. Copper & Miners' Co.*, 17 C. B. 561; 25 L. J. C. P. 166.

(*u*) 36 & 37 Vict. c. 66, s. 90.

way of denial of the claim or by way of admission—that, *e.g.*, something was due, the right to recover which has been avoided—then such facts constitute a proper matter of defence. But if they go to show a claim of a different nature, not merely denying or avoiding the plaintiff's claim, then such facts constitute a ground for a counter claim, and not a defence on equitable grounds. The defendant may, in the way of defence, rely on any equitable matter; and, so far as it goes to defeat the plaintiff's claim, as has already been stated (*v*), the judge has power to entertain any defence whatsoever, whether he would or would not have jurisdiction if the matter came before him by way of original claim or counter claim. This is not the case with counter claims, as will be seen hereafter (*w*).

*Statutory defence.* Where in any action of tort the defendant relies upon a statutory defence, he must set forth in his notice the year, chapter, and section of the statute on which he relies, or the short title thereof (*x*). No definition is given of the words "statutory defence," but the rule is clearly intended to apply to those cases where in the high court the general issue by statute could be pleaded, and any special matter given in evidence under it (*y*).

As to notice of defence when a summons for a judgment by default is issued, see *ante*, p. 128; and as to defences in proceedings under the Bills of Exchange Act and other cases, see the special chapters devoted to the particular subject. See *ante*, p. 25, for the defences of which notice is necessary under the Copyright of Designs Act, 1852 (*z*).

*Tender.* If the defendant has, at any time before the commencement of the suit, tendered to the plaintiff the amount claimed, or what he considers to be due to the plaintiff, he may set it up as a defence; and if he succeeds in establishing it, and no further sum is awarded to the plaintiff, the defendant will, according to the former practice in the high court, save all the costs of the suit (*a*).

(*v*) See *ante*, pp. 2, 5, 6.

(*w*) *Post*, part 5.

(*x*) Order ix., rule 14.

(*y*) Jud. Act, order xix., rule 16.

(*z*) It is conceived that the county courts have jurisdiction up to 50*l.* under the Copyright Act, 1842 (see *ante*, pp. 6, 9), and that in an action for piracy

the defendant would be compelled to give notice of the objections to the plaintiff's title on which he meant to rely. See 5 & 6 Vict. c. 45, s. 16.

(*a*) Rule 12, H. T. 1853. Costs are now in the discretion of the high court as well as of the judge in the county court.

The defence is not available unless, before or at the trial, the defendant pays into court (the payment may be made without costs) the amount alleged to have been tendered (*b*). Notice of the payment into court is given by the registrar, and no other notice of the defence of tender is rendered necessary by the rules. The money will not be paid out to the plaintiff until after the return-day, and then, if any costs are awarded to the defendant, they will be deducted and paid to the defendant (*c*).

The defence of tender cannot be raised to a claim for unliquidated damages (*d*), except in some cases of wrongs, as when by statute a tender of amends is permissible, and may be relied on at the trial. These cases, however, differ from tender in its ordinary sense.

A tender need not be made by the debtor in person; it may be made by a third person on his behalf (*e*). Nor is it necessary to make it to the creditor personally; it may be made to an agent authorised to receive the money for him (*f*). A tender of part of an entire demand is bad (*g*); so also is a tender of a larger amount than that due, if objected to on the ground of want of change (*h*); but a tender of £20 19s. 6d. in bank-notes and silver is a sufficient tender of a debt of 20*l.* (*i*). There must be an actual production of the money, or its production must be expressly or impliedly dispensed with (*j*); and the tender must be made unconditionally (*k*).

*Payment into court.* The defendant may pay into court any sum which he admits to be due to the plaintiff, and it appears that this payment may be made in *any* action whatsoever (*l*). The following rules of practice are, however, framed for payments only under "ordinary" summonses.

(*b*) Order ix., rule 16.

(*c*) Order xii., rule 8. See the provisions as to payment into court, *infra*.

(*d*) *Dearle v. Barrett*, 2 A. & E. 82; S. C., *nom.* *Searle v. Barrett*, 4 N. & M. 200.

(*e*) Bac. Abr., *Tender A.*

(*f*) *Per Parke, B., Kirton v. Braithwaite*, 1 M. & W. 310, 313.

(*g*) *Dixon v. Clark*, 5 C. B. 365.

(*h*) *Per Lord Abinger, C.B., Bevans v. Rees*, 5 M. & W. 308; *Betterbee v. Davis*, 3 Camp. 70.

(*i*) *Dean v. James*, 4 B. & Ad. 546.

(*j*) *Per Tindal, C.J., Finch v. Brook*, 1 Scott, 76; 1 Bing. N. C. 253.

(*k*) *Laing v. Meader*, 1 C. & P. 257; *Ford v. Noll*, 12 L. J. C. P. 2.

(*l*) 9 & 10 Vict. c. 95, s. 82. Money may be paid into court in detinue, *Taylor v. Addyman*, 13 C. B. 309; 22 L. J. C. P. 94; *Crossfield v. Such*, 8 Ex. 159; 22 L. J. Ex. 65. Money may now be paid into court also in all actions in the high court: Jud. Act, order xxx., rule 1.

The sum paid into court must include court fees proportionate to the amount paid in, and the plaintiff's solicitor's costs, if any (*m*). If the defendant claims to be entitled to a set-off, and pays in the residue, he must pay into court fees proportionate to the total amount admitted—*i.e.*, the amount of the set-off *plus* the amount paid in (*n*). An acknowledgment of the payment will be given in all cases (*o*). The object of the payment is to save costs, and in order to do so payment must be made five clear days at least before the return-day. Within twenty-four hours from the time of such payment, the registrar must give notice of the payment to the plaintiff (*p*) by post, or by causing the notice to be delivered at his usual place of abode or business (*q*). If the plaintiff elects to accept the sum paid in in full satisfaction of his claim, including costs, he must send to the registrar and the defendant by post, or leave at the registrar's office and at the defendant's dwelling-house or place of business a written notice (*r*) stating such acceptance, within such reasonable time before the return-day as the time of payment has permitted. After such notice the action will abate, and the plaintiff will not be liable for further costs of the defendant; but in default of such notice the cause will proceed (*s*). If then at the hearing the plaintiff do not recover a sum beyond that paid into court, the defendant will not be liable for any other costs than those paid into court, but will be entitled to receive from the plaintiff the costs incurred by him after the payment into court, such costs being settled by the court, and an order for payment by the plaintiff being made (*t*).

The defendant may also, *any* time before the return-day, pay money into court, with costs, as above mentioned; but if so paid in less than five clear days before the return-day, the court may order the defendant to pay such costs as the plaintiff shall have incurred in preparing for trial, before the notice of such payment (which, it seems, will be sent as in other cases) was received by him, or in attending the court (*u*).

Money paid into court in part payment of the amount claimed (*i.e.*, if less than the amount claimed) will not, if

(*m*) Order xii., rule 4.

(*n*) *Ibid.*, rule 6.

(*o*) Order ii., rule 10.

(*p*) See, as to default of officer, *post*, chap. vi., Notice of Appeal.

(*q*) 9 & 10 Vict. c. 95, s. 82; order xii., rule 4.

(*r*) Form 3, Appendix F.

(*s*) Order xii., rule 5.

(*t*) 9 & 10 Vict. c. 95, s. 82.

(*u*) Order xii., rule 4.

the plaintiff does not accept the sum paid in satisfaction of the action, be paid out to the plaintiff until after the return-day; and then, if any costs be awarded to the defendant, they will be deducted from the amount paid in, and paid to the defendant (*v*). Where the whole sum claimed is paid in, or where he accepts the amount in satisfaction, the plaintiff ought, it is conceived, to be allowed to obtain it at once (*w*). Money is obtained out of court on production of the plaint-note, in the same manner as when it has been paid in under a judgment (*x*).

As to payment into court in actions of tort sent for trial from the high court, see the chapter upon such actions, *post*, chap. x.

The effect of payment into court in actions of debt where the claim would have been formerly recoverable in the *superior courts*, under the general indebitatus counts, was to admit only the cause of action to the extent of the money paid in; but if the claim were upon a special contract, the payment admitted the contract and the breach, the payment being considered in the light of an admission that something was due from the defendant to the plaintiff, and consequently admitting that the contract was made, by which alone anything could be due (*y*). The principle of these decisions does not appear to have been altered by recent legislation.

The effect of payment in actions of tort, after a number of conflicting decisions, was laid down as follows by Jervis, C.J.: "Upon a review of the authorities, we think that where, in an action of tort, the declaration is general and unspecific, the payment of money into court, although it admits a cause of action, does not admit the cause of action sued for; and that the plaintiff must give evidence of the cause of action sued for before he can have larger damages than the amount paid into court. On the other hand, if the declaration is specific, so that nothing would be due to the plaintiff from the defendant unless the defendant admitted the particular claim made by the declaration, we think that the payment of money into court admits the cause of action sued for and so stated in the

(*v*) Order xii., rule 8.

(*w*) See 9 & 10 Vict. c. 95, s. 82. See order ii., rule 9, *post*, chap. v., as to days of payment.

(*x*) See, as to plaint-note, *ante*, p. 114; as to payment out of court on its production, *post*, chap. v.

(*y*) See *Archer v. English*, 1 M. & G. 876, *per* Tindal, C.J.; *Stapleton v. Newell*, 6 M. & W. 11, *per* Alderson, B.; *Fischer v. Aile*, 3 M. & W. 486; Taylor on Evidence, 5th edit., ss. 761, 762.



declaration. If the breach is single and the damages entire, then, of course, it becomes, under such circumstances, a mere question of damages; but if the damages may be compounded of several things—for instance, as in the case of *Story v. Finnis* (z), of the number and value of the goods taken—then, although the payment of money into court may, from the form of declaration, admit the particular cause of action sued for, still it may be necessary to prove the cause of action with a view to the damages; because, although the defendant would thus admit that he broke a particular pound, he would not admit that, as the result of that particular breaking, he rescued all the goods in respect of which damages were claimed" (a). But when payment into court is made, and an apology tendered, in actions for libel, under the provisions mentioned above, the payment is only conditional, and does not admit the cause of action (b).

*Deposit by plaintiff at the instance of defendant.* Where the residence or place of business of a defendant is more than twenty miles from the court in which a plaint is entered, he may, not later than two days from the date of service of the summons, forward, by registered post-letter, to the registrar of the court an affidavit disclosing a good defence upon the merits to the action. The registrar, on receipt of the affidavit, if satisfied that it discloses such a defence, must forthwith by notice (c) call upon the plaintiff to deposit in court, within two clear days from the date of the notice, such a sum as the registrar may, having reference to all the circumstances of the case, therein direct. The registrar must, where the deposit is made or not made, or the affidavit does not disclose a defence, send notice to the defendant (d); and where the deposit is not duly made, *the action must be struck out* (e). This rule is entirely new, and under what County Court Act it is framed it is impossible to say. It is conceived that no power short of a statutory power will enable the court to impose such a rule as this, which derogates from the right of every suitor to have his cause heard. The rule appears to be clearly *ultra vires*, and therefore null and void (f).

(z) 6 Ex. 123; 2 L. M. & P. 198.

(a) *Perren v. Monmouthshire Railway Co.*, 11 C. B. 855, 865; 22 L. J. C. P. 162.

(b) *Jones v. Miskie*, L. R. 3 Ex. 1; 37 L. J. Ex. 1; 16 W. R. 109; 17 L. T. N. S. 151.

(c) Form 68.

(d) Forms 67, 69.

(e) Order xi., rule 5.

(f) See *post*, chap. v.; and see chap. xvii. as to the validity of rules of court.

*Application for order on question between a defendant and person not a plaintiff.* If a defendant wishes to have the judgment or order of the court upon any question between himself and any person other than the plaintiff, he must, ten days before the return-day, give notice in writing to the person against whom, or as to whom, he desires such judgment or order, that he will at the time of the trial apply to the court for such judgment or order, and must set forth in the notice the substance of the judgment or order for which he so intends to apply (*f*).

## PART V. COUNTER CLAIM.

It is conceived that the whole of the extensive powers of counter claim now permitted in the high court might have been extended to county courts; but the framers of the rules have drawn them up to meet only the cases where a defendant sets up a counter claim sounding in damages or otherwise, or where, in respect of the claim of the plaintiff, the defendant sets up a claim for contribution, indemnity, or otherwise, against a person not a party. In regard to the counter claim which may now be set up by a defendant against a plaintiff, it may be said that he is entitled to set up, by way of counter claim, any claim which he may have against the plaintiff, whether for damages or not, and whether legal or equitable.

It has been already stated (*g*) that counter claims essentially differ from the defences mentioned in the last division of the present chapter; but one most important distinction in regard to the practice in county courts may again here be properly noticed. A defendant may *defeat* the claim of a plaintiff by any means which law and equity combined enable him to do, totally irrespective of any question of jurisdiction; and the judge must (*h*) decide upon the whole matter so far as it goes to defeat the claim of the plaintiff. But if a counter claim introduces matters beyond the statutory jurisdiction of the judge, he must only decide upon it so far as his jurisdiction extends, and if he attempts to do more, it is conceived that he may be restrained by prohibition (*i*). A judge of the high court may also order the transfer of the whole action to the high court if he thinks fit (*j*).

(*f*) Order xviii., rule 38.

(*g*) *Ante*, pp. 5, 142.

(*h*) 36 & 37 Vict. c. 66, s. 90.

(*i*) *Ante*, p. 69.

(*j*) *Ante*, pp. 2, 136.

Set-off properly constitutes a counter claim; but it is included in the last head of defences on the ground of its being included in the statutory provisions affecting defences.

Where the defendant sets off or sets up, by way of counter claim against the claim of the plaintiff, any right or claim, whether sounding in damages or not; and where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any other person, the defendant must, seven clear days before the return-day, file a concise statement of his counter or other claim (and a copy for each plaintiff and another copy for the judge (*k*)), containing the grounds upon which he makes it. If his claim is against a person, not a party, he must also state in it the name, address, and description of such person. The registrar must then make out a notice (*l*), and cause it to be forthwith served by the bailiff or the defendant's solicitor on the plaintiff, and the person against whom the claim is made. To the notice must also be attached a copy of the defendant's claim. The person served from the time of such service will for all purposes be in the same position as a defendant served with an original summons and particulars (*m*).

Any person served with the notice may, upon giving four days' notice of the application to all parties interested, apply before the trial to the judge for directions as to the conduct of the action and as to any proceedings or notices, and upon such application the judge may make such order and may give such directions as he thinks fit (*n*). He may also apply to the judge for an order that the counter claim be not allowed, and on the application the judge may make such order and give such directions as he thinks fit (*o*).

When any counter claim or claim as above mentioned is made, the judge or registrar may order the postponement of the trial to a day to be appointed by him, having regard to the nature of the claim and of the proceedings likely to arise on it, and upon such postponement notice must be given by the registrar to all parties interested (*p*).

If a counter or other claim, as above, has been made, and the judge at the trial thinks that it can be better disposed of by an independent action, he may order that the claim be excluded, whether any application be made to

(*k*) Order xxxvii., rule 31.

(*l*) Forms 65, 66.

(*m*) Order x., rule 1.

(*n*) Order x., rule 2.

(*o*) *Ibid.*, rule 3.

(*p*) *Ibid.*, rule 4.

him or not (*q*). If a person, not originally a party, but who has been served with notice of counter or other claim, does not appear at the trial, the judge may proceed with the trial and give such judgment or make such order against the person served and not appearing, as he thinks fit, or he may postpone the trial and give such directions and make such order as he thinks fit (*r*).

When a set-off or counter claim is established, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case (*s*).

## PART VI. EVIDENCE.

Both plaintiff and defendant have to consider before the hearing what evidence will be required at the trial in support of their cases. They may wish to inspect documents in the custody of the opposite party, or to obtain their production at the trial, or to interrogate their opponent upon matters relating to the action, and also to procure the attendance of persons to give testimony in their favour or bring documents on the day of hearing. The method by which these results may be attained will now be described, as well as the proceedings necessary to obtain the admission of documents proposed to be adduced in evidence.

*Discovery.* Formerly, if a party wished to discover the existence and description of documents supposed to be in the possession of his opponent, he was compelled to file a bill in a court of equity, but now a simpler method is provided. Where he desires the production of any documents relative to the matter in question in such action, he must make an affidavit (*t*) that such documents are in the possession or power of the opposite party. The registrar, on the delivery to him of the affidavit and a copy, will file the affidavit and make an order (*u*) (annexing a copy of the affidavit) that the party against whom such application is made shall answer on affidavit, stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they or any of

(*q*) Order xvi., rule 13.

(*r*) *Ibid.*, rule 14.

(*s*) *Ibid.*, rule 16.

(*t*) Form 54.

(*u*) Form 55.

them are in, and whether he objects, and if so, on what grounds, to the production of such of the documents as are in his possession or power; and the time within which the opposite party must return such affidavit to the court must be stated in the order, which must be served by the bailiff, or a solicitor, or by post (*v*).

The party against whom such order is made must answer on affidavit (*w*), and send it and a copy to the registrar, by post or otherwise, within the time stated. The registrar must file the affidavit, and send, by post or otherwise, to the other party, the copy of the affidavit (*x*), sealed with the seal of the court.

If any further order is required by the party seeking discovery after the filing of the affidavit, in answer to the order, he must apply to the registrar. If there be no matter of fact or law in dispute, the registrar will make an order in accordance with the facts; but if any such matter be in dispute, both affidavits must be sent by the registrar to the judge, who will appoint a time, of which the registrar must give notice to the parties, when and where he will hear the application, and make such order as will be just (*y*).

The last three of the foregoing rules supply the practice in cases where discovery is sought under the provisions of the Common Law Procedure Act (*z*), 1854, extended to county courts by Order in Council made the 18th November, 1854.

In order to make a successful application under this section, three leading points must be attended to:—

1. The document must be in the “possession or power of the opposite party”; and this must be shown with reasonable certainty.
2. It must relate to “the matters in dispute.”
3. It must be a document relating to the matter in question in such action (*a*).

The process of discovery is only preliminary to obtaining

(*v*) Order xiii., rule 1.

(*w*) Form 56.

(*x*) Order xiii., rule 2.

(*y*) *Ibid.*, rule 3.

(*z*) 17 & 18 Vict. c. 125, s. 50.

See the provisions set out, App. B.

(*a*) Day's Common Law Procedure Acts, notes to sect. 50 of Act of 1854. See further, as to discovery, Taylor on Evidence, 5th edit., s. 1597, &c.

inspection of the documents sought to be discovered; and it would seem that an order for discovery should only be made when there is reasonable ground to suppose that inspection would follow (*b*). How inspection is obtained is shown in the next paragraph.

*Inspection of documents.* The ends sought by a bill of discovery were, so far as relates to documents, twofold—first, to discover their existence and description; next, to acquire a knowledge of their contents (*b*). The practice in the former case has just been explained; the rules governing the latter will now be set out. The common law power to allow inspection of documents was much enlarged by Lord Brougham's Evidence Act of 1851. The Act gives power to the judges to allow the applicant to inspect all documents in the custody or under the control of the opposite party, relating to the action or other legal proceeding, and to take examined copies, in all cases where discovery might have been obtained in equity (*c*). The question as to when discovery might have been obtained in equity is too large to be treated of here, and the author is compelled to confine himself to the practice to be observed (*d*).

If in any action any party desires to inspect any written or printed documents or instruments which he is entitled to inspect, relating to the matter in question in the action, and which are in the possession or control of the other party, the first-mentioned party may, five clear days before the hearing, give notice to the other party, by post or otherwise, that he or his solicitor desires to inspect any such document or instrument (which must be described) at any place to be appointed by the other party. If such other party neglects or refuses to appoint a place, or to allow the inspection within three clear days after receiving the notice, the judge may, on the day of hearing, adjourn

(*b*) See Taylor on Evidence, s. 1596.

(*c*) 14 & 15 Vict. c. 99, s. 6. See, as to the nature of documents of which inspection will be permitted, *Woolley v. North London Railway Co.*, L. R. 4 C. P. 602; 38 L. J. C. P. 317; *Mahoney v. Scottish Widows' Fund*, L. R. 6 C. P. 252; *Cossey v. London and Brighton Railway Co.*, L. R. 5 C. P. 146; 39 L. J. C. P. 174; 18 W. R. 493; 22 L. T. N. S. 19.

(*d*) A defendant is entitled to inspect documents in the plaintiff's possession bearing upon the amount of damages, though the cause of action is admitted, and there is no issue to try. The words "relating to the action" do not mean simply the issue raised: *Pape v. Lister*, L. R. 6 Q. B. 242; 40 L. J. Q. B. 87; 19 W. R. 445; 24 L. T. N. S. 70.

the cause, and make such orders as to costs as he shall think fit (e).

An order for the production of any deed or document must state the time when, and the person to whom, it must be produced; and it may further order that it may be deposited with the registrar, to be produced at any trial or hearing, or that the registrar may make a copy for any party (f).

*Admission of documents.* Where a party desires to give any document in evidence, he may, not less than five clear days before the trial, give notice to any other party to the action, who is competent to make admissions, requiring him to inspect and admit the document. The expense of proof of it afterwards, whatever may be the result of the action, will have to be paid—unless he admits the document within three days—by the party who ought to have admitted it, unless the judge otherwise orders. No costs of proof of any document will be allowed unless notice to admit has been given, except in cases where, in the opinion of the registrar, the failure to give notice has saved expense (g).

*Notice to produce documents.* Either party may also give notice to the other to produce documents, in his custody or control, the production of which he believes will be advantageous to his cause. The notice may be oral or in writing, and addressed to the party or his solicitor. The documents need not be specified separately, although it is, perhaps, safer when they are known to specify them. If enough is stated on the notice to induce the party to believe that a particular instrument will be called for, this will be sufficient. Thus a notice to produce “all letters written by the plaintiff to the defendant relating to the matters in dispute in the action” has been held sufficient, where production was required of a particular letter not specified. If the person called on to produce a document fails to produce it, after such notice as above, secondary evidence of its contents may be given. And as there are no degrees of secondary evidence, the evidence of the contents of the document may be given by means of a copy, orally, or in any available manner (h).

(e) Order xiii., rule 5.

(f) *Ibid.*, rule 4. This rule seems to be framed so as to allow of examined copies being taken by the registrar, but there seems to be no reason why the parties

should not be allowed to take them.

(g) *Ibid.*, rule 9.

(h) See Taylor on Evidence, 5th edit., ss. 413, 495.



A person may also be summoned to produce documents at the hearing (*post*, p. 156); and if not a party, or a person in privity with the party, as a clerk or agent; or if no secondary evidence of the contents of a document is available, the person required to produce a document should be served with a summons of this kind, as neglect to attend with the document will be contempt of court, and punishable accordingly. The court will, however, take into consideration whether the documents, if produced, would have been admissible (*i*). But a person ought to attend and leave the question as to the validity of any excuse for not producing them to the judge (*j*).

*Documents produced from proper custody.* Where any documents are produced to the court from proper custody, they must be read without further proof, if they appear genuine, and no objection is taken thereto; and if the admission of any document so produced is objected to, the judge may adjourn the hearing for the proof of the documents, and the party objecting must pay the costs caused by such objection, in case the documents are afterwards proved, unless the judge otherwise orders (*k*).

*Interrogatories.* The plaintiff or defendant may, in furtherance of his case, administer written interrogatories to the opposite party, if such party is liable to be called as a witness, upon matters relating to the action as to which he seeks information (*l*). The party proposing to interrogate must apply to the registrar for leave to deliver interrogatories, and must at the same time file an affidavit by himself and his solicitor or agent, or, by leave of the registrar, by the solicitor or agent only, stating that he believes that he will derive material benefit in the cause from the discovery which he seeks, and that there is a good cause of action, or defence, upon the merits (*m*). The registrar then makes order that the applicant may, within a given time, deliver the interrogatories in writing to the opposite party, upon any matter as to which discovery may have been sought, and that the party interrogated must answer the questions

(i) See Taylor on Evidence, 5th edit., s. 1143.

(j) *Ibid.*, s. 1121.

(k) Order xiv., rule 5. It is difficult to understand the meaning of this rule, which, so far as it goes beyond the general law of evidence, is clearly *ultra vires*. It is con-

ceived that, if it is of any value at all, the rule can only be relied on in cases in which documents would be admitted without proof in other courts. See Taylor on Evidence, s. 1679, A.

(l) 17 & 18 Vict. c. 125, s. 51.

(m) *Ibid.*, s. 52, form 57.

by affidavit in writing, and return it to the registrar for filing within such time, to be fixed by the registrar, as will enable it to be used in evidence at the trial (*n*). If the party interrogated objects to answer any of the interrogatories, he must file an affidavit stating his grounds of objection, and that he will be prepared to show cause to the court, on the return-day, against his being required to answer them; if he objects to some only, he may include in his affidavit both replies and objections (*o*). If he then successfully shows cause, the judge may direct the cause to proceed, or adjourn it; but if he fails to show sufficient cause, the judge may order the interrogatories to be then and there answered  *viva voce*  in court, or may adjourn the cause, and make order for the answering of the interrogatories by such time, and for payment of such costs as may have been incurred through the delay, as he thinks fit (*p*).

If the answers of the party interrogated are insufficient, the judge may, if he thinks fit, on the application of the party interrogating, direct an oral examination of the party interrogated, before the registrar, upon such of the answers or matters as he may direct (*q*).

*Oral examination.* When an oral examination of a witness takes place, whether in pursuance of an order under the provisions last mentioned or under any other rule of practice, the registrar, or his clerk in his presence, must transcribe the answers given by the witnesses examined before him, and read over the answers so transcribed. The witness must sign the answers, and the registrar will then file them as the deposition of the witness (*r*). Disobedience to the order to attend and be examined is a contempt of court, and punishable accordingly (*s*).

*Witness out of jurisdiction.* The judge may, if he thinks fit, on the application of a party desirous to examine a

(*n*) Order xiii., rule 6.

(*o*) *Ibid.*, rule 7. In practice the interrogatories themselves are usually settled by the registrar as they used to be at chambers in the superior courts. It is conceived, however, that the more correct practice is that indicated by these rules, and that the sole question for the registrar should be whether, as a principle, the party is entitled to interrogate as to a particular matter, and not to decide on the

form of the interrogatories. See Day's Common Law Procedure Acts, 4th edit., p. 309.

(*p*) Order xiii., rule 8.

(*q*) 17 & 18 Vict. c. 125, s. 53, form 58.

(*r*) Order xiv., rule 7.

(*s*) 17 & 18 Vict. c. 125, ss. 51, 54. The provisions as to interrogatories were extended to county courts by Order in Council, dated November 18, 1867. See Appendix B.

witness out of the jurisdiction, appoint the registrar of the court within the district of which the witness resides, to take his examination pursuant to the above provisions. The registrar, after taking the examination, must then transmit it by post to the registrar of the court in which the action is pending (*t*).

*Examination de bene esse.* Where it becomes necessary to examine a witness *de bene esse*, application upon affidavit must be made to the judge or registrar to appoint an examiner for that purpose (*u*).

*Witnesses.* Except where it is otherwise provided by the rules, evidence is to be taken *vivâ voce* on oath according to the old practice on the trial of plaints (*v*).

The attendance of witnesses for this purpose is enforced by means of summonses granted by the court. They are obtained from the registrar without leave, either for service in the home or any foreign district (*w*). By leave of the judge or registrar they may be issued in blank and served by the party applying for them or his solicitor, or by some person in the permanent and exclusive employment of such party or his solicitor; but only one name may be inserted in such summons (*x*). The section which was repealed in order to make way for the above provisions, permitted the putting on one summons of any number of names (9 & 10 Vict. c. 95, s. 85); but it is not by rule or by the new section of the Act of 1875 provided whether or not in ordinary cases, where service is to be by bailiff, more than one name may be placed in the summons.

The summons may be issued with or without a clause requiring the production of books, deeds, papers, and writings, in the possession or control of the person summoned as a witness (*y*). The summons must be served a reasonable time before the return-day (*z*); and a reasonable sum, according to the scale of allowance in force, should be tendered for expenses (*a*). The parties themselves and their wives are competent witnesses (*b*).

If the person summoned fails to attend at the hearing, without sufficient cause, or to produce books or documents which he has been summoned to produce, or if any person

(*t*) Order xiv., rule 8.

(*u*) *Ibid.*, rule 9.

(*v*) *Ibid.*, rule 3.

(*w*) Form 20.

(*x*) 38 & 39 Vict. c. 50, s. 2;  
order xiv., rule 1.

(*y*) *Ibid.*, form 21.

(*z*) Order xiv., rule 2.

(*a*) Taylor on Evidence, 5th  
edit., s. 1129; and see 9 & 10 Vict.  
c. 95, s. 86.

(*b*) 9 & 10 Vict. c. 95, s. 83.

being in court and required to give evidence refuses to be sworn and give evidence, the judge may fine him a sum not exceeding 10*l.* (*c*). The whole or part of the fine may, in the discretion of the judge, after deduction of costs, be applied towards indemnifying the party injured by the neglect or refusal, and the remainder will form part of the general fund of the court (*d*). The payment of the fine may be enforced on the order of the judge as in case of an ordinary judgment (*e*).

Where a witness summoned to produce documents does not produce them at the trial, the court may, upon admission or proof of the service of the summons within a reasonable time, and that the documents are in the possession or power or under the control of the party summoned, and that they relate to the matter then pending before the court, make an order for their production by him, and the court may deal with them when so produced, and with all costs occasioned by their non-production, as may appear just. This provision does not affect the rules as to the admission of secondary evidence of such documents (*f*).

A prisoner, not in custody in any civil proceeding, may also be brought up to give evidence under order of the judge (*g*). The person wishing to call him as a witness must make an affidavit (*h*) that he is a material witness. The person having him in custody will not be bound to obey the order unless a tender be made of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the prisoner or person in going to, remaining at, and returning from the county court (*i*).

The scale of expenses allowed to witnesses is as follows:

|                                                                                         | <i>s.</i> | <i>d.</i> |    | £ | <i>s.</i> | <i>d.</i> |
|-----------------------------------------------------------------------------------------|-----------|-----------|----|---|-----------|-----------|
| Gentlemen, merchants, bankers, and professional men, <i>per diem</i> .....from          | 15        | 0         | to | 1 | 1         | 0         |
| Tradesmen, auctioneers, accountants, clerks, and yeomen, <i>per diem</i> ..from         | 7         | 6         | „  | 0 | 15        | 0         |
| Artisans and journeymen, <i>per diem</i> from                                           | 4         | 0         | „  | 0 | 7         | 6         |
| Labourers and the like, <i>per diem</i> from                                            | 3         | 0         | „  | 0 | 4         | 0         |
| Travelling expenses, sum reasonably paid, but not more than sixpence per mile, one way. |           |           |    |   |           |           |

If the witnesses attend in more than one cause, they will be entitled to a proportionate part in each cause only.

(*c*) Form 70.

(*d*) 9 & 10 Vict. c. 95, s. 86.

(*e*) *Ibid.*, s. 87. See form 71

for warrant of execution against his goods.

(*f*) Order xiv., rule 4.

(*g*) Form 73.

(*h*) Form 72.

(*i*) 19 & 20 Vict. c. 103, s. 31.

*Affidavits.* Where any party wishes to use at the trial the affidavit of any particular witness, or an affidavit as to particular facts, he may, five clear days before the hearing, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party, within two clear days, gives notice to the other party that he objects to the use of the affidavit, he will be taken to have consented to the use of it, unless the judge otherwise orders (*j*). This provision seems to be general and applicable to all cases, and perhaps may be useful in many cases of mere formal proof, for which it has hitherto been necessary to call witnesses to give evidence at law *vivâ voce*.

In regard to affidavits generally, the following provisions apply. They may be sworn before a judge or registrar without fee, or before a commissioner of the supreme court (if not a registrar), or before a justice of the peace (*k*).

They (*l*) must be expressed in the first person, and must be drawn up in paragraphs and numbered (*m*). All affidavits other than those for which forms are given must state the deponent's age, occupation, quality, and place of residence, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and also what facts or circumstances deposed to are known to or believed by him, from information derived from other sources than his own knowledge, and what such sources are (*n*). If these rules are not complied with, the costs of affidavits will not be allowed on taxation, unless the court otherwise directs (*o*). All affidavits must be filed in the registrar's office before use; but this rule will not hinder a judge from making an order in an urgent case, upon the undertaking of the applicant to file any affidavit sworn before the making of such order, provided that such order be not issued until such affidavit shall have been filed (*p*). No affidavit in which there is any knife erasure, or which is blotted, so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, nor any affidavit in which there is any interlineation, unless the person before whom the same is sworn has duly initialled such interlineation, nor any affidavit or other document

(*j*) Order xiv., rule 6.

(*k*) 19 & 20 Vict. c. 108, s. 58.

(*l*) For heading and conclusion, see form 3.

(*m*) Order xxxvii., rule 37.

(*n*) *Ibid.*, rule 38.

(*o*) *Ibid.*, rule 39.

(*p*) *Ibid.*, rule 40.

which is so imperfect upon the face, or by reason of having blanks thereon, that it cannot easily be read or understood, may be filed or used in any action or proceeding, unless the judge otherwise orders (*q*). When a registrar rejects an affidavit under the foregoing rules, he must give notice, by post or otherwise, to the party offering it for filing, and of the reasons for the rejection (*r*).

The above rules apply to all cases in which any evidence may be given, or matter proved by affidavit; but, except in cases where the rules provide for proof by affidavit, all evidence of witnesses is to be taken *vicâ voce*; and even in cases in which evidence is required or permitted to be taken by affidavit, such evidence may be taken *vicâ voce* on oath, if the judge or registrar shall, on the hearing of any application or otherwise, so direct (*s*).

When used, affidavits and depositions will be read as the evidence of the party by whom they are used (*t*).

## PART VII. JURY.

Causes in the county courts are tried in most cases before the judge alone, who combines the offices of judge and jury, and decides upon the issues both of law and fact. And if no notice be given by either side for a jury, or for the appointment of assessors (*u*), the cause, irrespective of the amount or matter in dispute, will be tried before the judge alone (*v*). Where the amount claimed exceeds 5*l.*, either plaintiff or defendant may by notice in writing to the registrar, three clear days before the day of hearing, demand a jury; and if the judge thinks fit, he may, on the application of either party, if the amount claimed is less than 5*l.*, order the cause to be tried before a jury (*w*). The party applying for a jury must at the time of giving notice deposit five shillings with the registrar for payment of the jury. The cost of the jury will be costs in the cause, unless the judge otherwise orders (*x*). If the notice of demand of a jury has not been given in due time, or if at the trial both parties desire to try by jury,

(*q*) Order xxxvii., rule 41.

(*r*) Order ii., rule 13. No form is given in the schedule. It may be framed, however, on form 67.

(*s*) Order xiv., rule 3.

(*t*) *Ibid.*, rule 10.

(*u*) Under 38 & 39 Vict. c. 50, s. 5. See *post*, p. 162.

(*v*) 9 & 10 Vict. c. 95 s. 69.

(*w*) *Ibid.*, s. 70, order xvi., rule 1.

(*x*) 9 & 10 Vict. c. 95, s. 71.



the judge may, on terms, adjourn the case so as to allow of its being tried by jury (*y*). Where notice had not been given in the prescribed time, and the fee had not been paid, the defendant gave a new notice, and paid the fee two days before the hearing. At the hearing an adjournment was agreed to, on account of the non-attendance of the defendant's counsel, but not for the purposes of the rule last mentioned. No jury was summoned for the adjourned hearing, and it was held that the defendant was not entitled to have the cause heard before a jury (*z*).

Notice of the demand of a jury must be communicated to the other party to the action by the registrar, either by post or by causing the same to be delivered at his usual place of abode or business (*a*). It is not necessary, however, for either party to prove on the trial that such notice was communicated by the registrar (*b*).

When an action of contract or tort is sent for trial by the high court, the above provisions as to juries apply (*c*). Actions for the recovery of land or tenements, or for any damages in respect of, or to enforce any right relating to land, or of interpleader, or of replevin, and proceedings in the nature of *scire facias*, may at the instance of either party be tried by jury (*d*). When a new trial is granted, the judge may make it a condition that it shall take place before a jury, although the former trial did not (*e*), or either party may demand and obtain a jury in the manner described above (*f*).

The provisions mentioned above will not, it is conceived, of themselves operate to enable the parties to an equity case, unless coming within order xvi., rule 3, in which there is no claim for damages, to obtain a jury. But the Act conferring an equity jurisdiction on county courts evidently contemplates the use of a jury, as it provides that "when-ever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the county courts by this Act, it shall be summoned" (*g*) in accordance with the above provisions. The old rules, now rescinded (order iv., rules 5 and 6), did provide for such cases, the present ones do not. The practice in equity,

(*y*) Order xvi., rule 2.

(*z*) *Fletcher v. Baker*, L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; 22 W. R. 646; 30 L. T. N. S. 675.

(*a*) Form 90.

(*b*) 9 & 10 Vict. c. 95, s. 70.

(*c*) *Post*, chap. x.

(*d*) Order xvi., rule 3.

(*e*) Order xxviii., rule 2.

(*f*) *Reg. v. Harwood*, 22 L. J. Q. B. 127.

(*g*) 28 & 29 Vict. c. 99, s. 7.



under 21 & 22 Vict. c. 27, s. 3, was to settle issues for trial by jury *after* the hearing of the cause, unless they were settled by consent previously (*h*); but this practice is cumbersome, as it practically requires two trials. In the absence of rules, it is impossible to lay down any rule for the guidance of suitors; but by consent it is conceived that any matter of fact involved may be tried and decided by jury.

The number of jurors required to form a jury in the county courts is five (*i*). The provisions as to the persons from whom they are to be summoned will be found in the 9 & 10 Vict. c. 95, s. 72 (*j*). Either of the parties to the cause is entitled to his lawful challenge against all or any of the jurors in the same way as he would be entitled in the high court. The jury must be impanelled and sworn, as occasion may require, to give their verdicts in the causes which shall be brought before them at the court, and being once sworn need not be re-sworn in each trial. Their verdict must be unanimous (*k*).

The summonses (*l*) to the jury are issued by the registrar on receipt of the demand for a jury, and are forthwith delivered to the bailiff for service (*m*). Service may be made by delivery of the summons to the juror, or to his wife or servant, or any inmate at his usual place of abode, trading, or dealing. But no person may be summoned or compelled to serve more than twice in one year, nor can he be summoned or compelled to serve if he has been summoned and has attended on any jury at the assizes, or any court of Nisi Prius, or at the central criminal court for the same county, within six calendar months next before the delivery of such summons (*n*). Ten jurors will be summoned unless the judge otherwise orders (*o*). In default of attendance at the court at the time named in the summons, the person summoned may be fined not more than 5*l.* by the judge for each default (*p*). The payment of the fine may be enforced by order of the judge in the same manner as payment of any judgment debt (*q*).

(*h*) Morg. Chan. Acts and Orders, notes to 21 & 22 Vict. c. 27, s. 3.

(*i*) 9 & 10 Vict. c. 95, s. 73.

(*j*) *Ibid.*, s. 72.

(*k*) *Ibid.*, s. 73.

(*l*) Form 91.

(*m*) Order xvi., rule 1.

(*n*) 9 & 10 Vict. c. 95, s. 72, which see as to who may be summoned.

(*o*) Order xvi., rule 4.

(*p*) 9 & 10 Vict. c. 95, s. 72; for form of order, see form 92.

(*q*) *Ibid.*, s. 87; for form of warrant of execution, see form 93.

## PART VIII. ASSESSORS.

Under these provisions, skilled assessors may be called in to assist the judge in adjudicating upon matters before him. The power to summon them is derived from the Act of 1875, which empowers the judge, if he thinks fit, on the application of either party, to summon to his assistance one or more persons of skill and experience in the matter to which the action of proceeding relates, who may be willing to sit with the judge and act as assessors (*r*).

A party who desires assessors to be summoned to assist the judge must file an application therefor (*s*), giving the names of the assessors he wishes to be summoned; and if he has obtained the consent of the other party to the assessors named, he must file the consent with his application (*t*). On receipt of the application, the registrar must forward a copy of it to the judge; and he, if he sees fit, must return it with his approval, and the registrar must then summon the assessors named (*u*). If the judge does not think that assessors should be summoned, notice must be given by the registrar to all parties (*v*). Where the party applying does not file with his application the consent of the other party to the appointment of the assessors proposed by him, the registrar must, after obtaining the consent of the judge to the appointment of assessors (*v'*), forthwith cause notice (*x*) of the application to be served on the other party; and the party so served must, as soon as possible after receipt of the notice, inform the registrar, in writing, whether or not he accepts the appointment of the assessors proposed in the notice, or any of them, and he must give the names of such assessors as he is willing should be summoned (*y*).

Where the party served with such last-mentioned notice does not accept the proposed appointment, he must forthwith inform the registrar in writing of his non-acceptance, and of his reasons therefor. And the registrar must thereupon fix a time and place for hearing the objection and selecting the assessors. The objection may be heard on the return-day of the summons, or before the judge, acting under the

(*r*) 38 & 39 Vict. c. 50, s. 5.

(*s*) Form 80.

(*t*) Order xxxii., rule 7.

(*u*) Form 81.

(*v*) Order xxxii., rule 8.

(*w*) *Supra*.

(*x*) Form 82.

(*y*) Order xxxii., rule 9.

powers conferred on him by section 4 of the Act (*z*), or, by direction of the judge, before the registrar. Notice (*a*) of the time and place at which the objection will be heard must be given to all parties interested. On the hearing, the judge or registrar may make such order as he may think just (*b*), and any costs occasioned by the objection or consequent upon it, may be ordered to be paid by the party objecting (*c*).

Every person requiring the judge to be assisted by assessors must, at the time of application, pay to the registrar the sum of 2*l.* 2*s.* if the amount claimed does not exceed 20*l.*, and 4*l.* 4*s.* if it exceeds that amount. Such payments will be costs in the action unless the judge otherwise orders (*d*). Where an action is adjourned, the plaintiff must pay the assessors' fees for the day of adjournment forthwith after the order of adjournment has been made by the court (*e*).

If the assessors do not appear at the place and time appointed for the trial, the judge may either proceed to try the action, with the assistance of such one or more of the assessors, if any, as do appear, or, if none appear, without assistance, or he may adjourn the trial (*f*).

*Who may be assessors.* The registrar of each county court must from time to time, at the request of the judge, submit to him the names of as many persons as the judge may direct, whom, having regard to the nature of the ordinary business of the circuit, and to their fitness, from ability and reputation, he believes to be qualified to act as assessors; and the judge must, from the names so submitted, frame a list of persons to act as assessors for each court within his circuit (*g*).

The registrar must apply to such persons to know if they are willing to act as assessors, and to attend any court which they may be summoned to attend a reasonable time beforehand (*h*). When the judge has completed his list, the registrar must have it printed with the names in alphabetical order, and cause it to be hung up in his office and in court (*i*).

Every assessor named in the list will continue to be an

(*z*) 38 & 39 Vict. c. 50, s. 4,  
*post*, p. 165.

(*a*) Form 83.

(*b*) Form 84.

(*c*) Order xxxii., rule 10; 38 &  
39 Vict. c. 50, s. 5.

(*d*) Order xxxii., rule 12.

(*e*) *Ibid.*, rule 13.

(*f*) *Ibid.*, rule 11.

(*g*) *Ibid.*, rule 1.

(*h*) *Ibid.*, rule 2.

(*i*) *Ibid.*, rule 3, form 37.

assessor until a new list is settled, or until he has given notice in writing that he is unwilling to act (*j*), in which case the registrar must remove his name from the list (*k*).

*Remuneration.* Every person named in the list will receive for each day's attendance 1*l.* 1*s.* or 2*l.* 2*s.*, according as the subject-matter of the action does or does not exceed 20*l.* in value, together with such sum, if any, for his expenses as the judge may order (*l*).

(*j*) Order xxxii., rule 4.

(*k*) *Ibid.*, rule 5.

(*l*) Order xxxii., rule 6.

## CHAPTER IV.

### SPECIAL APPLICATIONS AT CHAMBERS OR AT THE TRIAL.

#### PART I. EX PARTE APPLICATIONS.

THE judge of a county court may, whether within the district of any of his courts or not, make any order, or exercise on an *ex parte* application, any authority or jurisdiction in any action or proceeding pending in any of the courts of which he is judge, which, if the same related to an action in the high court, might be given, made, or exercised by a judge of the high court in chambers, "and with the consent of both parties to hear and decide any matter at any place either within or without any such district" (a).

Under these provisions several rules similar to those in the high court under the Judicature Act have been prescribed.

*Service.* Any notice relating to any interlocutory proceeding may, by leave of the registrar, be served by the solicitor of the party requiring to effect such service; but the costs of service, and proof of it, will not be allowed except by order of the court (b).

*Payment into court by plaintiff when lien claimed.* Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter claim to recover specific property other than land, and the party from whom it is sought does not dispute the title of the party seeking to recover it, but claims to retain the property by virtue of a lien or otherwise as security for any sum

(a) 38 & 39 Vict. c. 50, s. 4.  
This Act came into operation the  
day after the Judicature Act.

(b) Order xxxvii., rule 11; *ante*,  
p. 112.

of money, the judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum, if any, for interest and costs as the judge may direct, and that upon such payment into court being made, the property be given up to the party seeking to recover it (c). This power seems to be entirely new, and is derived from order lii., rule 6, of the Judicature Act.

*Injunctions and other orders.* When any party desires before the trial an order upon any of the matters following; that is to say, an order in the nature of an injunction, or an order of court for the production of any deed, for the appointment of a receiver, or to secure the possession, detention, or preservation of any property, or to obtain security from any person for any moneys in his possession, or to enforce the deposit or the payment into court of such moneys pending litigation, or for the sale of any goods, wares, or merchandise which may be of a perishable nature, or which the court may think desirable to have sold at once, and the payment of the price thereof into court, or for the inspection or taking samples of any goods, wares, or merchandise, or for measuring, weighing, or making any experiment upon any goods, wares, or merchandise, or for surveying, measuring, or making any plan, level, or section of any building or place, or for a view of any premises that may be in dispute, or the taking of any accounts or making any inquiries, he may file an application for such order, and apply *ex parte* to the judge, either in or out of court, upon affidavits setting forth the facts which render such order immediately necessary. Upon such application, the judge may make an order, absolute in the first instance, or to be absolute at any time to be ordered by him, unless cause is shown to the contrary, or may make such other order or give such directions in the matter as he may deem necessary; and he may also, if he pleases, order immediate execution (d).

An order for inspecting, surveying, measuring, or for making any plan or model, may also give authority to any

(c) Order xi., rule 2.

(d) *Ibid.*, rule 1. It seems that, on an *ex parte* application in an administration action, a creditor's

action commenced before ought not to be restrained: *Nokes v. Gough*, L. R. 17 Ex. 297; 29 L. T. N. S. 828.

person, to be named in the order, to enter, with such persons as may be necessary for his assistance, upon any lands or tenements to be described in the order, in the possession of any party to the action, for the purpose of executing the order (e).

Where an order is made for inspecting, surveying, measuring, weighing, making any experiment, or for taking any sample, or making any plan or model, by any person to be named in it, the order may include an order for the registrar, or some other person to be named in it, to examine on oath and take the deposition of the person so named as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model; and the order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding (f).

*Preparation of draft orders.* The draft of all orders made under the above rules 1 and 2 must be prepared beforehand by the party applying, and be settled by the registrar; and when the party makes the application, he must present the draft order to the judge for his approval; and the judge, if he approves of it, must sign it (g). The draft so signed must be transmitted by the applicant to the registrar of the court, who must draw up the order in conformity with it, and seal and file it, and issue a copy, under the seal of the court, to the bailiff or party's solicitor for service (h).

*Amendment of parties.* An application for the amendment of parties (*ante*, p. 166) may be made to the judge under these provisions (i); and it appears, consequently, that it may be made *ex parte* (j).

*Receiver.* A receiver is sometimes appointed on an *ex parte* application (k). Where before or at the trial of any action it appears to the court expedient that a receiver be appointed, such appointment must be made, whether asked for as part of the relief in the plaint or not (l).

Receivers have not hitherto been appointed in any but certain equity cases. The combination of relief now permitted may, however, now necessitate the appointment in a

(e) Order xi., rule 6.

(f) *Ibid.*, rule 7.

(g) *Ibid.*, rule 3.

(h) *Ibid.*, rule 4.

(i) Order xvii., rule 13.

(j) 38 & 39 Vict. c. 50, s. 4.

(k) See *ante*, p. 166.

(l) Order xi., rule 8.



common law action, and the rules in regard to him may conveniently be noticed here.

The person appointed may be the high bailiff or other person. If not the high bailiff, he must give security to the registrar for the faithful discharge of his duties and the payment over of money as the court may direct (*ll*). He must submit his accounts to be audited by the registrar, at least once a year, or if the receivership does not last as long, as soon as conveniently may be, after the receipt or realisation of the assets, and immediately after such audit he must pay over to the registrar the balance found to be in his hands. The account must be written on foolscap paper bookwise, and the items of every account must be numbered consecutively, and the account must be verified by affidavit, and be therein referred to as an exhibit (*m*). The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the accounts, and may disallow any item not proved to his satisfaction (*n*).

Any time before the complete realisation of the assets, the receiver must produce his accounts to be audited, on receiving seven days' notice in writing by post or otherwise from the registrar, and such notice may be sent to the address of the receiver (*o*). It is not necessary for any party to the suit to attend the audit; but where a party is dissatisfied with a receiver's account, he may apply to the judge or registrar for a revision of the registrar's allowances (*p*).

The court may order the receiver to pay over, at such time, or from time to time, as it thinks fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, the yearly or other accruing rents or interest instead of paying it into court, and the receiver will be entitled to be credited with such payments in his accounts when audited (*q*).

The receiver is not a permanent officer of the court as are the registrar and high bailiff. He is appointed only to perform certain duties in particular suits, where the court deems it necessary.

(*ll*) Order iii., rule 1. For conditions as to security, see form 213.

(*m*) Order iii., rules 2, 5.

(*n*) Order iii., rule 3.

(*o*) *Ibid.*, rule 4.

(*p*) *Ibid.*, rule 6.

(*q*) *Ibid.*, rule 7.

PART II. ARBITRATION.—CHANGE OF VENUE.—ADJOURNMENT  
AND AMENDMENT.

The provisions treated of in this division are collected together in consequence of its being frequently necessary to make use of them before as well as at the hearing. It is obvious that where it is intended to refer a cause, or where the venue has to be changed, a great waste of time and money is caused to the parties if they have to wait until the day of hearing, and come prepared to try the cause; yet though the provisions of the statutes appear to be sufficiently large to allow of the exercise of all the powers to be considered in this chapter at any period of the suit, no rules of practice have been framed, except in the case of arbitrations, for applications before the day of hearing. Even in arbitrations the rules do not show how the order of reference is to be obtained. The power to make it is vested in the judge, but as he frequently has to travel over a large circuit, and does not sit at chambers, how is his order to be obtained? At the same time one of the forms is headed "Summons in chambers" (*r*), and *perhaps* a summons would be granted in the matters mentioned below if applied for. Reference has already been made (*s*), and the matter will be more fully treated of hereafter (*t*), to the concluding paragraph of the 9 & 10 Vict. c. 95, s. 78, providing that in any case not provided for by the Act, or by the rules, the general principles of practice in the superior courts may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts. These provisions may assist in speculations as to the construction of a practice, but the great difficulty lies in the absence of a practice in the county courts corresponding with that of judges and masters at chambers. Hence there appears to exist no power to summon an opponent before the judge or registrar to show cause why, for example, the venue should not be changed, why an adjournment should not take place, why an amendment of particulars of demand or defence should not be permitted. At the same time, as the judge has full control over costs, there is a power in his hands which, if judiciously used, may compel opponents to consent to the acts being done which, under a more perfect system, would be ordered by the judge or registrar,

(*r*) Form 12.(*t*) *Post*, chap. xvii.(*s*) *Ante*, p. 106.

after consideration of the statements of both parties. It is therefore suggested that, where the plaintiff or the defendant wishes to obtain the benefit of any of the provisions referred to before the trial, he should, if the registrar refuses to issue a summons, a reasonable time before the trial, give notice to the opposite party, and ask for his consent to an order, stating the grounds upon which it is asked for. If assented to, it is conceived that an order might be drawn up, and forwarded to the judge for signature, as in case of an order made *ex parte* (u), and that an order so made would be valid. If, however, the opponent refused to assent to the proposed order, it is conceived that the party asking for it could do no more than give notice that he should make the application, say, for a change of venue, to the judge on the day of trial, and ask that the party objecting should be ordered to pay the costs of the day. If the judge then found that the order ought to have been made, it is conceived that it would be a very proper penalty upon the objecting party to make him pay the costs of the day. It must not be forgotten, however, that a reference to arbitration can only be made by consent of both parties; hence the refusal to consent to a reference could not properly be visited with the penalty of costs.

*Arbitration.* The judge may, with consent of both parties, after entry of the plaint, in all cases within the ordinary jurisdiction of the court, and in cases of agreement under sect. 23 of 19 & 20 Vict. c. 108 (*ante*, p. 17), make an order for the reference (v) of the cause, with or without other matters within the jurisdiction of the court, to the arbitration of such person or persons, and in such manner and on such terms, as he thinks reasonable and just (w). The reference will not be revocable by either party without the consent of the judge. The award of the arbitrator or arbitrators or umpire will be entered as the judgment in the cause, and be as binding and effectual as if given by the judge. On application at the first court held one week after the entry of the award, the judge may, if he thinks fit, set aside the award, or, with the consent of both parties, revoke the reference, or order another reference. The order for reference may be made before, upon, or after the return-

(u) *Ante*, p. 167.

(v) The power under sect. 3 of the Common Law Procedure Act, 1854, to refer causes brought in

the superior courts to county court judges, is taken away by the 21 & 22 Vict. c. 74, s. 5.

(w) Form 148.

day. The same fees will be payable as would have been payable on a judgment by default (*x*).

Before the 19 & 20 Vict. c. 108, s. 25, it was held that a defendant, by consenting to a reference, did not waive his right to obtain a prohibition, if the court had no jurisdiction over the cause (*y*). It is conceived, however, that the defendant would now, especially after the 30 & 31 Vict. c. 142, s. 14, be held to have consented to the jurisdiction, and have waived his right to a prohibition (*z*). An allegation in a plea, that the plaintiff and defendant mutually referred the action in the county court and all matters in difference, is supported by proof of an order of reference made by the judge, by consent, under the above provisions; and the plea was held good without stating that the reference was ordered by the judge (*u*). B, to an action by A, pleaded a set-off exceeding A's claim; all matters in the cause were then referred to an arbitrator under the above provisions, and he awarded to B the amount of the excess. B then sued in the superior court for money due under the award and on the common counts; A then pleaded judgment recovered: *Held*, that this plea was no answer, the judgment in the first action being no bar to an action by B for the balance of his claim against A, either on the award or on the common money counts (*b*).

Where parties who have a dispute about particular matters agree to abide by the decision of a county court judge upon it, but do not follow the rules of practice required by the Acts to give him jurisdiction in any particular character, his position becomes that of an arbitrator, and no appeal lies from his decision (*c*). Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror, and abide by the decision of the judge, after viewing the premises, and before his decision the defendant withdrew his consent, the court held that the power of the judge as arbitrator was gone, but that the cause remained, and so ordered the judge to rehear it (*d*).

(*x*) 9 & 10 Vict. c. 95, s. 77, order xxiii., rule 1. Formerly perjury could not be assigned on a false oath taken before an arbitrator appointed under these powers: *Reg. v. Hallett*, 2 Den. C. C. 237; 20 L. J. M. C. 197; but now, since 14 & 15 Vict. c. 99, s. 16, it may. As to perjury, see *post*, chap. xvii.  
(*y*) *Knowles v. Holden*, 24 L. J. Ex. 223.

(*z*) See *ante*, pp. 18, 80.

(*u*) *Roper v. Levy*, 7 Ex. 55; 21 L. J. Ex. 29.

(*b*) *Jones v. Jones*, 22 W. R. 577.

(*c*) *Pearce v. Winkworth*, 28 L. T. N. S. 710. *Quære*, how far his decision would be binding.

(*d*) *Norburn v. Hillman*, L. R. 5 C. P. 129; 39 L. J. C. P. 183; 22 L. T. N. S. 67.

*Change of venue.* If the judge is satisfied by either party to an action pending in his court, that it can be more conveniently or fairly tried in some other court, he must order the venue to be changed, and that the cause be sent for hearing to such other county court; or if the judge be interested in the matter of any cause pending in his court, he must order the venue to be changed, and that the cause be sent for hearing to some convenient county court, of which he is not the judge, at his discretion (*e*). In either case the registrar must forthwith transmit by post to the registrar of the court to which the cause is to be sent a certified copy of the plaint, as entered in the plaint-book (*f*), the duplicate copy of the summons and particulars served on the defendant (*g*), and a certified copy of the order for changing the venue. The judge of the court to which the cause is sent must appoint a day for the hearing, and notice (*h*) of the day of hearing must be sent by post, or otherwise, by the registrar (of such last court) to both parties (*i*).

Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties, they must be transferred to the court in which the first plaint was entered, and must then be proceeded with in the same way in all respects as if they had been commenced in that court (*j*).

If an action be brought by an officer of a county court in the court of which he is an officer, except in case of the registrar suing as trustee (*k*), the judge, at the request of the defendant, must order the venue to be changed, and that the cause be sent for hearing to the court of some convenient district of which he is not the judge (*l*). If officers of the court are defendants, the judge may, if he thinks fit, direct the trial to take place at some convenient court of which he is not the judge (*m*). The proceedings, after the making of the order, are the same as in the cases above mentioned (*n*). It is conceived that if, notwithstanding the 19 & 20 Vict. c. 108, s. 19, a judge entered a

(*e*) Form 74.

(*f*) *Ante*, p. 114.

(*g*) *Ante*, p. 119.

(*h*) Form 75.

(*i*) 19 & 20 Vict. c. 108, s. 22;  
28 & 29 Vict. c. 99, s. 11.

(*j*) Order xxxvii., rule 17.

(*k*) In the Act, the words are  
"official assignee."

(*l*) Form 74.

(*m*) Order xvi., rule 18. See  
19 & 20 Vict. c. 108, s. 21, *ante*,  
p. 55. Before the Judicature  
Act these provisions had been  
held to apply to suits in equity:  
*Linford v. Gudgeon*, L. R. 6 Ch.  
359; 19 W. R. 577; 40 L. J. Ch.  
514.

(*n*) 19 & 20 Vict. c. 108, s. 20,  
form 75.

plaint in his own court, he would be bound to change the venue, under the last section, on the application of the defendant.

There appears to be nothing to prevent the application for the change of venue before the hearing, as has already been suggested (*o*).

*Adjournment.* The judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and may also, from time to time, adjourn any court, or the hearing or further hearing of any cause, in such manner as he may think fit (*p*). This section also contemplates an application before the hearing, and a rule has been framed accordingly; but it does not meet the cases which have been suggested. The rule provides that the parties may, at any time before an action is called on, by consent, and without payment of any trial-fee, postpone the trial to such subsequent court as the judge shall direct; but at such subsequent court the fees must be paid, or the cause will be struck out (*q*).

Where anything required by the practice of the court to be done by either party, before or during the trial, has not been done, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice (*r*).

When a cause is adjourned, no order of adjournment need be served on either party unless by direction of the judge (*s*). When service is directed, the order must be prepared by the registrar of the home court, and delivered to the bailiff, who must serve it by post or otherwise (*t*).

As we have already seen (*ante*, p. 141), the judge may also adjourn the hearing in a case where the defendant wishes to set up a defence of which notice is required, but has not been given; and also when either party requires a jury (*ante*, p. 160) and notice has not been given in due time; also where assessors have been summoned and do not attend (*ante*, p. 163).

And where a summons is served (*ante*, p. 120) on a defendant about to remove out of the ordinary jurisdiction of the court, the judge may adjourn the trial, as has already been explained. So also when in any case it appears that the

(*o*) *Ante*, p. 169.

*ante*, p. 169, as to the practice suggested.

(*p*) 9 & 10 Vict. c. 95, s. 81, form 94.

(*r*) Order xxxvii., rule 28.

(*q*) Order xxxvii., rule 26. See

(*s*) *Ibid.*, rule 27.

(*t*) Order xviii., rule 2.



service of the summons has come to the knowledge of the defendant less than ten days before the trial (*ante*, p. 124).

As to adjournment when the plaintiff has become bankrupt, see *ante*, p. 108; and when two suits are brought in different courts for the same cause of action, *post*, p. 184. And as to adjournment when a party neglects to allow inspection of documents, *ante*, p. 152; and for production or proof of documents, *ante*, p. 154; and for further answers to interrogatories, *ante*, p. 155; and in case of the death or absence of the judge, *post*, chap. xvii.

*Costs on adjournment.* Where a cause is adjourned by the court at the hearing owing to its not being reached, the judge may allow a fee for the day's attendance to counsel and solicitor where engaged, and such costs will be costs in the cause (*u*).

*Postponement of trial.* When it appears to the judge or registrar that from the course of proceedings in any action the trial cannot be held on the return-day of the summons, he may postpone the trial until such other day as the state of the proceedings require, and give notice of such postponement to all parties and persons interested (*v*). This rule seems to contemplate a postponement for the convenience of, or in consequence of the state of business in the court, as distinguished from an adjournment for other causes.

*Amendments.* The judge may, at all times, amend all defects and errors in any of the proceedings, whether there is anything in writing to amend by or not, and whether the defect or error is that of the party applying to amend or not. All such amendments may be made with or without costs, and on such terms as the judge thinks fit. All amendments necessary to determine, in the existing suit, the real question in controversy between the parties must be made, if duly applied for (*w*).

This section is clearly sufficiently comprehensive to admit of amendments being made before the hearing; but in the rules of practice to be presently noticed, no provision is made by which the practice, when an amendment is required before the hearing, is made known (*v*). One of the most frequent cases where amendment is necessary, is when an error

(*u*) Order xxxvii., rule 29.

(*v*) *Ibid.*, rule 30.

(*w*) 19 & 20 Vict. c. 108, s. 57.

(*o*) See *ante*, p. 169.



has been made in the particulars of demand or defence (*y*); and if the amendment be not applied for and assented to by the opposite party before the hearing, it may be sometimes necessary for a plaintiff to abandon his action altogether (*z*). Thus it has been held that the judge cannot at the trial amend the plaintiff's particulars of demand, showing a cause of action over which the court has no jurisdiction, to one over which it has, as by substituting false imprisonment for malicious prosecution (*a*), or by entering upon the particulars in an action of debt an abandonment of the excess of a claim over 50*l.*, and so reducing it to 50*l.* (*b*). Though, in an action of tort in which the plaintiff claimed 50*l.* by his particulars, the evidence showed 70*l.* damages, and the judge, at the plaintiff's request, was held to have rightly amended the particulars by adding an abandonment of any claim beyond 50*l.* (*c*). It seems to be unsafe, in view of these decisions, to proceed to trial if such a mistake has been made in the particulars as to show a cause of action not within the jurisdiction, unless the defendant will consent to the amendment (*d*). In cases of mere accidental omissions, it is conceived that the course suggested (*e*) might be safely followed. The words of the section are almost the same as those of the Common Law Procedure Act, 1854, s. 96, and under it it has been held that all amendments ought to be made necessary to enable the parties to try the real question which they came to try, but not to try any unexpected controversy which may arise during the trial (*f*).

In interpleader proceedings the judge ought to amend the particulars if they are insufficient, so that he may adjudicate upon the claim on the merits (*g*). As to amendment when

(*y*) In the high court very extensive powers of amendment may now be exercised; so great, indeed, that on motion for decree the Master of the Rolls allowed an entirely new case to be substituted for that originally made on behalf of the plaintiff (*Budding v. Murdoch*, 24 W. R. 23; W. N. 1875, 186). It is conceived, however, that in the absence of a legislative enactment extending the powers of amendment in county courts, the only amendments which can be made are such as could have been made in the county courts before the Judicature Acts.

(*z*) See 9 & 10 Vict. c. 95, s. 75.

(*a*) *Hopper v. Warburton*, ante, p. 16.

(*b*) *Avards v. Rhodes*; *North v. Holroyd*, ante, p. 20.

(*c*) *Bodger v. Nicholls*, 28 L. T. N. S. 441.

(*d*) See 9 & 10 Vict. c. 95, s. 75, and note (*y*), supra.

(*e*) *Ante*, p. 170.

(*f*) *Wilkin v. Reed*, 15 C. B. 192; 23 L. J. C. P. 193.

(*g*) *Beswick v. Boffey*, 9 Ex. 315; 23 L. J. Ex. 89; *Reg. v. Stapleton*, 2 L. M. & P. 603; 21 L. J. Q. B. 8.

actions of contract and tort are sent for trial by the high court, see chap. x.

*Parties.* The rules in regard to the amendment of parties have already been particularly mentioned in the chapter devoted to parties (*h*).

No other rules as to amendment have been prescribed.

(*h*) Chap. ii., *ante*, p. 93.

## CHAPTER V.

### THE TRIAL.

*Persons entitled to appear.* The parties to the suit may either conduct their cases themselves and address the court; or they may employ a solicitor, or, through a solicitor, a barrister to conduct their cases for them. The solicitor who is thus allowed to conduct a cause in court, must be the solicitor generally retained in the action, and not a solicitor practising as advocate for another. It is for the judge to determine whether he is or is not the solicitor acting generally for the party; and if there is any evidence on which he can form an opinion, the court will not interfere with his decision. It seems that the fact of a solicitor being clerk to another does not disqualify him from appearing, provided he be the solicitor acting generally in the action for the suitor (*a*). A solicitor will not be allowed to appear until he has signed the roll or book of the registrar, no fee being payable therefor; and he may be required to produce his certificate once a year (*b*). No notice of the intention to employ a barrister or a solicitor need be given to the court or to the other side (*c*). If the judge thinks fit, he may allow a person not a solicitor or barrister to address the court on behalf of, and instead of, a party to the suit (*d*).

It may here conveniently be noticed that, subject to the above provisions, when by the rules of practice any act may be done by any party, such act may be done either in

(*a*) *Bookham v. Potter*, L. R. 3 C. P. 490; 37 L. J. C. P. 276; 16 W. R. 806; 18 L. T. N. S. 479; *Re Spooner, In re Shreeve v. Charlesworth*, 18 L. T. N. S. 325.

(*b*) Order xvi., rule 7.

(*c*) *Ibid.*, rule 8.

(*d*) 15 & 16 Vict. c. 54, s. 10.

person or by his solicitor or agent, if it can be legally done by an agent (e).

A solicitor employed merely to bring an action in a county court has no implied authority after judgment to enter into an agreement on behalf of the plaintiff to give the defendant time for payment (f). As to the costs of solicitors, see *post*.

As to the appearance of infants, see *ante*, p. 99.

*Calling on the cause.* The causes are called on in their order on the day appointed for the trial, and disposed of one after another. Those actions of contract which are undefended are disposed of before the registrar before the others are heard. Causes in which counsel or solicitors appear have no precedence over others, although when applied to, judges, out of courtesy, usually take cases in which counsel or solicitors are engaged before other causes.

*Plaintiff not appearing.* If the plaintiff does not appear, either by himself or his solicitor when the case is called on, on the return-day, it is struck out. The defendant may then, if he appears, and does not admit the claim, apply for costs for his trouble and attendance. The amount to be allowed is in the discretion of the judge, and may be the same as if the cause had been tried, including counsel's fee, attendance of witnesses, &c. (g). No hearing fee will, however, be allowed or charged. The amount of the costs may be recovered from the plaintiff by the ordinary means for recovering any sum ordered to be paid by the court. If, however, the defendant appears and admits the claim, and pays the court fees payable in the first instance by the plaintiff, the court may give judgment for the plaintiff as if he had appeared (h). If the plaintiff does not appear, and the cause is struck out, and the judge afterwards refuses to restore it, the case is at an end, and the court above cannot interfere (i).

As to non-appearance of parties on the return-day of a default summons, see *ante*, p. 129.

*Defendant not appearing.* If in any action founded on

(e) Order xxxvii., rule 8. See *ante*, p. 112, as to the employment of solicitors and the rules affecting them.

(f) *Lovegrove v. White*, L. R. 2 C. P. 440; 40 L. J. C. P. 253; 64 L. T. N. S. 554.

(g) Form 23.

(h) 9 & 10 Vict. c. 95, s. 79; 13 & 14 Vict. c. 61, s. 10; order xvi., rule 5.

(i) *Jennings v. London General Omnibus Co.* (2). 30 L. T. N. S. 640; 22 W. R. 757.

*contract* the defendant does not appear at the hearing, by himself or some duly authorised person, and no sufficient excuse for his absence is shown, the registrar may, by leave of the judge, upon proof of the service of the summons and of the debt, enter up judgment for the plaintiff, and order payment by instalments, or enter a nonsuit, or strike out or adjourn the cause, as if he were the judge; and his judgment will be as valid as if both parties had attended the court.

The judgment and execution thereon may be set aside, and a new trial granted on such terms as the judge may think fit to require (*j*). The rule preventing the registrar from sitting on a day when the judge does not sit is not again prescribed.

In any action where the defendant does not appear, or sufficiently excuse his absence, or where he neglects to answer when called in court, the judge, upon proof of the service of the summons, may try the cause on the part of the plaintiff only, and judgment will be as valid as if both parties attended. The judge may, at the same or any subsequent court, set aside the judgment and execution thereon, and grant a new trial on such terms as to costs, and security for debt and costs, as he thinks fit, or on such other terms as he thinks fit, on sufficient reason for so doing being shown to him (*k*). No service of the judgment upon the defendant is necessary under this section before issuing execution; if the time for payment were afterwards varied, notice would probably be necessary (*l*).

*Defendant admitting claim.* Where a defendant appears at the hearing, either in person or by some person duly authorised to appear for him, and admits the claim, the registrar may, by leave of the judge, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the court (*m*). As to the practice on summonses for a judgment by default, see *ante*, p. 129.

**THE HEARING.** Before a cause is heard, the plaintiff must pay the hearing fee to the registrar. The sum payable is two shillings in the pound in every case where the demand is not admitted (*n*).

(*j*) 30 & 31 Vict. c. 142, s. 16, form 24.

(*k*) 9 & 10 Vict. c. 95, s. 80. As to proof of service of the summons, and proof of knowledge of the summons where personal ser-

vice has not been effected, see *ante*, p. 124.

(*l*) *Ely v. Moule*, 5 Ex. 918; 20 L. J. Ex. 29.

(*m*) 30 & 31 Vict. c. 142, s. 17.

(*n*) 19 & 20 Vict. c. 108, s. 78.

Assuming that both parties to the suit appear, either by themselves or by solicitor or counsel, the judge, with or without the assistance of a jury or assessors, as the case may be, hears the cause (*o*).

*Opening the case.* The case is opened by the plaintiff or defendant, as the case may be, in person or by counsel, making a statement of the facts and of the evidence intended to be offered in support of them. The right to begin generally devolves upon the plaintiff, but sometimes the defendant begins. The most general rule as to the right to begin is that he on whom the onus of proof lies, or, in other words, the party against whom, if no evidence were offered on either side, the verdict would pass, is entitled to begin (*p*).

Supposing the plaintiff to begin: after making his opening speech, he calls witnesses in support of his case, and if no witnesses are intended to be called on the other side, he then sums up his case and evidence. If the defendant calls witnesses, however, the plaintiff is entitled to defer his second speech until the defendant's case is closed, being then entitled to reply on the whole case.

No evidence may be given by the plaintiff of any demand or cause of action except such as shall have been stated in the summons and particulars (*q*). The parties themselves, their wives, and all other persons may be examined as witnesses (*r*). When affidavits and depositions may be used, they will be read as the evidence of the party by whom they are used (*s*). Except in the cases specified in the rules, as already noticed, all evidence must be taken *viva voce* (*t*).

The defendant opens his case in a similar manner to the plaintiff, examines his witnesses, and, in some courts, is permitted to sum up his evidence (*u*). In others, the judge does not permit a second speech by the defendant.

*Appearing in person.* A plaintiff or defendant appearing in person has the right to address the court as above, and then to tender himself as a witness. The judge, in those cases where the parties are not represented, endeavours to

(*o*) 9 & 10 Vict. c. 95, ss. 69, 74.

(*p*) See Taylor on Evidence, 5th edit., s. 350 *et seq.*

(*q*) 9 & 10 Vict. c. 95, s. 75.

(*r*) *Ibid.*, s. 83.

(*s*) Order xiv., rule 10.

(*t*) *Ibid.*, rule 3; and see *ante*, p. 159.

(*u*) The provisions of sect. 18 of the Common Law Procedure Act, 1854, have not been extended to county courts, but a power to permit the defendant to sum up his evidence may be derived from the conclusion of the 9 & 10 Vict. c. 95, s. 78.

elicit from the witnesses such facts as will enable him to decide upon the question in dispute.

*Cross-examination.* Both plaintiff and defendant have the right to cross-examine each other's witnesses, and by questions of a leading character to obtain admissions in support of their own cases. In examination-in-chief neither plaintiff nor defendant is permitted to put leading questions—*i.e.*, to put a question in such a form that it suggests the answer. Leading questions may, however, be put about immaterial matters. After cross-examination by the other side, the party whose witness has been cross-examined may re-examine him for the purpose of explaining matter elicited in cross-examination, but not of introducing new matter.

*Judge and jury.* The judge decides all matters of law which present themselves during the hearing. He decides upon the admissibility of evidence, the allowing of amendments, permitting adjournments; and if a jury has been summoned, he has to sum up and explain to the jury the whole of the evidence. The jury then decide upon the facts, and the verdict is entered for the plaintiff or the defendant, according to their finding. In a case in which a judge refused to receive the verdict of the jury, the verdict being for the plaintiff, and discharged them, a rule was granted to the judge, the registrar, and the defendant to show cause why the verdict should not be entered, and judgment given for the plaintiff, and execution issued (*v*). Where a juror was withdrawn, in an action of trespass, under an agreement to abide by the decision of the judge, after he had viewed the premises, and the defendant afterwards repudiated the agreement, the court held that the cause was still undisposed of, and must be reheard (*w*). If there is no jury, the judge decides both upon the law and upon the facts (*x*). Where assessors are summoned, their duty would appear to be to advise the judge only.

The court may try the whole matter of the action, and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction it may consider necessary to enable it to give a final judgment upon a day to which the trial may be adjourned, and may also make such order as to costs as it may think fit (*y*).

(*v*) *Jardine v. Smith*, 8 W.R. 484;  
and see *Coke v. Jones*, 9 W. R. 618.

(*w*) *Norburn v. Hilliam*, *ante*,  
p. 86.

(*x*) 9 & 10 Vict. c. 95, s. 69,  
forms 23, 24.

(*y*) Order xvi., rule 11.



If it appears to the court that there are claims, estates titles, or rights, or any equitable duties or liabilities upon which it cannot adjudicate by reason of all the proper parties not being before the court, it may order such parties to be made plaintiffs or defendants upon such terms as to adjournment, notices, and costs as it may think fit (z). The powers under the last two rules are probably justified by section 90 of the Judicature Act.

See, as to adjournment and postponement of the trial, *ante*, p. 174; and as to change of venue, when an officer of the court is a party to an action, *ante*, p. 172; and where actions are commenced in different courts by parties in the same interest, *ante*, p. 172; and as to amendment, *ante*, pp. 93, 174.

It seems to have been thought formerly that a judge might alter his decision at the same court on the same day, with the parties still before him (a); but this appears not now to be the law (b). The effect of the decisions seems to be that if a judge attempts to rescind a judgment after having given it, he subjects himself to a prohibition (a), and that he cannot even alter it, as he is *functus officio* (b).

*Want of jurisdiction.* If the cause, at any stage of the proceedings, appears to be one over which the court has no jurisdiction, the judge must order it to be struck out, unless the parties consent to the court having jurisdiction (c).

It seems that, where an objection is taken to the jurisdiction at the hearing, the judge ought to enter it upon the proceedings in order that the court above may see if there is a ground for a prohibition (d). If the particulars (e) or the evidence (f) show that a claim is not within the jurisdiction, the judge is justified in refusing, and ought to refuse, to continue the hearing beyond the point at

(z) Order xvi., rule 12.

(a) *Per* Coleridge, J., *Jones v. Jones*, 5 Dow. & L. 628, 632; 17 L. J. Q. B. 170.

(b) *Irving v. Askew* (2), L. R. 5 Q. B. 208; 39 L. J. Q. B. 118.

(c) See 30 & 31 Vict. c. 142, s. 14; 19 & 20 Vict. c. 108, ss. 23, 25, and the remarks upon Jurisdiction by consent, *ante*, p. 17; and as to waiver of the mode of consent required by statute, *ante*, p. 80.

(d) *Pears v. Wilson*, 2 L. M. & P. 515; 6 Ex. 833; 20 L. J. Ex. 381.

(e) *Hopper v. Warburton*, 32 L. J. Q. B. 104; 11 W. R. 384; 7 L. T. N. S. 722; *Hunt v. North Stafford Railway Co.*, 2 H. & N. 451; 25 L. J. Ex. 374.

(f) *Lloyd v. Jones*, 6 C. B. 81; 17 L. J. C. P. 206; *Mountney v. Collier*, 1 E. & B. 630; 22 L. J. Q. B. 124.

which he is satisfied that he has no jurisdiction; but he ought necessarily to go sufficiently into the evidence to satisfy himself upon the point (*g*).

In the event of the cause being struck out for want of jurisdiction, the judge has power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction, and the plaintiff had not appeared, or had appeared and failed to prove his demand (*h*).

*Nonsuit.* If the plaintiff does not prove his demand to the satisfaction of the judge, he may direct a nonsuit, or give judgment for the defendant (*i*). The duty of the judge is thus explained in a recent case by Blackburn, J. (*j*): "If the particulars disclose no cause of action, or it appears from the opening statement of the plaintiff's advocate that there was no cause of action, no judge would be bound to hear the facts proved, and he would in such case act rightly in nonsuiting the plaintiff; but if what is assigned as a cause of action might be a cause of action, then the judge ought to hear the evidence, and see if the cause of action can be proved."

Before the Judicature Act, the power to nonsuit was, however, held to be the same power as at common law, and the plaintiff had, and still has apparently, a right to elect whether he would be nonsuited or not (*k*). Where the court has no jurisdiction, the plaintiff cannot be nonsuited, the proper course is to strike out the cause (*l*). A plaintiff has a right to be nonsuited at any time before the jury has delivered a verdict; or, if the judge tries the case alone, at any time before he has delivered judgment (*m*).

The Judicature Act has altered the rule which formerly obtained, by which a plaintiff was entitled to be nonsuited as just mentioned, and still retain the right of bringing a fresh action. Now, in the high court (*n*), a nonsuit will have

(*g*) See *per* Patteson, J., *Thompson v. Ingham*, 14 Q. B. 710; 19 L. J. Q. B. 189.

(*h*) 30 & 31 Vict. c. 142, s. 14. Before this Act it had been held that he could not give costs: *Lawford v. Partridge*, 1 H. & N. 621; 26 L. J. Ex. 147.

(*i*) 9 & 10 Vict. c. 95, ss. 79, 89, form 23.

(*j*) *Richardson v. Silvester*, L. R. 9 Q. B. 36; 29 L. T. N. S. 395; 43 L. J. Q. B. 1; 22 W. R. 74.

(*k*) *Clarke v. Stancliffe*, 7 Ex. 439; 21 L. J. Ex. 129; *Kershaw v. Chantler*, 26 L. T. N. S. 474, where it is said: "With no propriety can a judge nonsuit a plaintiff without his consent."

(*l*) *Lawford v. Partridge*, 1 H. & N. 621; 26 L. J. Ex. 147; and see *ante*, p. 182.

(*m*) *Robinson v. Lawrence*, 7 Ex. 128; 21 L. J. Ex. 36.

(*n*) Jud. Act, order xli., rule 6.

the same effect as a verdict for the defendant, unless the judge otherwise orders; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms as to payment of costs or otherwise as to the judge may seem just. This rule has been also extended to county courts (*nn*); but as it clearly deprives the plaintiff of a right, it is probably *ultrà vires* (*o*).

When a nonsuit is directed, the costs are generally ordered to be paid by the plaintiff, but it is conceived that the judge has the same power over the costs in case of nonsuit as in other cases (*p*).

*Second suit for same cause.* If a person sue another in a county court for any cause of action for which he has already sued him and obtained judgment in another court, proof may be given of the former suit and judgment, and the party suing will not be entitled to recover in the second suit, but must be adjudged to pay to the opposite party three times the costs of the second suit (*q*).

The fact that another action is pending for the same cause of action, either in another county court or in the high court, is no answer to a plaint, the courts being of opinion that it was not intended to extend pleas in abatement to county courts (*r*). So the court refused to stay proceedings in an action for the recovery of a tenement (*s*), though ejectment was pending in the superior courts (*t*); and where a plaint had been removed by *certiorari*, and the plaintiff then sued again for part of the claim in a county court, the court held that they could not stay or prohibit the proceedings, though it was made part of the rule that the former action should be discontinued (*u*). In face of these decisions, a rule has been framed, that when at the return-day it appears that an action for the same cause at the suit of the same plaintiff is pending in any other court of record, the court shall order the plaint to be struck out unless the plaintiff shall undertake to discontinue the action in the other court, before a day to be named, to which the trial shall be adjourned; and that unless before such ad-

(*nn*) Order xvi., rule 17. As to setting aside the nonsuit, see order xxviii., rule 3, chap. vi.

(*o*) See *post*, chap. xvii., as to rules of practice.

(*p*) 9 & 10 Vict. c. 95, ss. 79, 88.

(*q*) 13 & 14 Vict. c. 61, s. 18.

(*r*) *Williamson v. Bissil*, 7 H.

& N. 391; 31 L. J. Ex. 131; *McMurray v. Wright*, 11 W. R. 34; *Byrne v. Knipe*, 5 D. & L. 659; 18 L. J. Q. B. 33; *Edwards v. Rogers*, 19 L. J. Ex. 149.

(*s*) *Post*, chap. xiii., part 3.

(*t*) *Williamson v. Bissil*, *supra*.

(*u*) *Edwards v. Rogers*, *supra*.

journed trial the action shall have been discontinued, the plaint shall be struck out (*v*). It is conceived that, however reasonable this rule may appear to be, it is *ultrà vires*, unless authorised by the Judicature Act, as amounting to something equivalent to an injunction, and that the statutes give no power to the judge to order the cause to be struck out upon such grounds (*w*). In *Williamson v. Bissil* it is suggested by Bramwell, B. (*x*), that after judgment, the judge, if he has the power, should stay proceedings until the other action is discontinued, but no general power of staying execution seems to exist (*y*). The court held, in *Byrne v. Knipe* (*z*), that such a power did exist, and was properly exercised in such a case, under the 9 & 10 Vict. c. 95, s. 92, but that section is now repealed, and under the 19 & 20 Vict. c. 108, s. 45, which replaces it, as will be seen hereafter (*a*), the judge must, unless the plaintiff consents to a different order, if the sum for which judgment is obtained exceeds 20*l.*, order payment within fourteen days, although he may order payment, if the amount recovered does not exceed 20*l.*, at such time as he thinks fit.

THE JUDGMENT. All orders for payment of costs, and all judgments for the payment of any debt, or damages, or costs, must be entered by the registrar in the minute-book; but all special judgments or orders in the nature of decrees must be settled by the registrar, and must be sealed with the seal of the court, and filed of record, and a minute of the filing and of the date of it must be entered in the minute-book (*b*). The latter provisions apply to equity actions, more particularly mentioned in chap. xiv.

All orders and judgments, subject to the power of appeal hereafter explained (*c*), are final and conclusive between the parties (*d*). The judgment is a bar to an action for the original consideration in any other court (*e*). So where a servant sued her master for wrongful dismissal, and the judge gave a verdict against her, and after waiting

(*v*) Order xvi., rule 10.

(*w*) See, as to the power to make rules, *post*, chap. xvii.

(*x*) 31 L. J. Ex. 132.

(*y*) See chap. vi., for the powers as to staying execution.

(*z*) *Supra*.

(*a*) *Post*, p. 187.

(*b*) Order xviii., rule 1; 9 & 10 Vict. c. 95, s. 111.

(*c*) Chap. vi.

(*d*) 9 & 10 Vict. c. 95, s. 89.

See, as to the absence of any power in the judge to alter his decision, *ante*, p. 182; and as to the penalty for suing twice for the same cause of action, p. 184.

(*e*) *Austin v. Mills*, 9 Ex. 288; 23 L. J. Ex. 40; *Berkeley v. Elderkin*, 1 E. & B. 805; 22 L. J. Q. B. 281.

a quarter she summoned her master before justices for a quarter's wages, it was held that the matter for the consideration of the justices was the identical matter which had been decided in the county court—viz., whether the discharge was wrongful (*f*). And where A had sued B for rent, and the judge had found in favour of B on the ground that there was a yearly tenancy, it was held, in a subsequent action of trespass brought in a superior court by B against A, that A was estopped by the former judgment from contending that the tenancy was a weekly one (*g*).

The judgment will date from the day of formal delivery, and not from the day of hearing, if judgment should be reserved. So where a judge was absent, and a cause was heard by his deputy, who took time to consider his judgment, and the judge on his return read the decision, but postponed formal delivery of it until the 1st January following, it was held that the judgment of the deputy was the judgment of the court, and that it was a judgment of the 1st January (*h*). Where a deputy continues to act after the death of a judge, pursuant to the 19 & 20 Vict. c. 108, s. 11, it is conceived that he becomes entirely *functus officio* on the appointment of a new judge, and that neither he nor the new judge has power to deliver a reserved judgment. The proper course would appear to be for the new judge to rehear the case (*i*).

If the amount for which judgment is given does not exceed 20*l.*, exclusive of costs, the judge may order it to be paid at such time and by such instalments as he thinks fit (*j*). Unless the order be for payment forthwith, it will be payable fourteen days from the date of the order, unless the court otherwise directs; and where it is for payment by instalments, and no period is mentioned, the first instalment will become due on the twenty-eighth day from the day of making the order, and every successive instalment will become due at a like period of twenty-eight days from the day of the previous instalment becoming due (*k*). In no case will judgment be given for a fraction of a penny, though included in a claim (*l*).

(*f*) *Routledge v. Hislop*, 2 E. & E. 549; 29 L. J. M. C. 90.

(*g*) *Flitters v. Alfrey*, L. R. 10 C. P. 29; 44 L. J. C. P. 10, 73; 31 L. T. N. S. 878, 881.

(*h*) *Rathbone v. Munn*, 9 B. & S. 708; 18 L. T. N. S. 856.

(*i*) *Hoey v. McFarlane*, 4 C. B. N. S. 718; 4 Jur. N. S. 785. See *post*, chap. xvii.

(*j*) 19 & 20 Vict. c. 108, s. 45, form 24.

(*k*) Order xviii., rule 6.

(*l*) Order vii., rule 9.

Where the sum for which judgment is obtained exceeds 20*l.*, the judge must order the full amount to be paid forthwith, or within fourteen days, unless the plaintiff, or his counsel, solicitor, or agent, consents to its being paid by instalments, in which case the judge will order payment to be made at such times and in such amounts as the plaintiff will consent to (*m*).

The order for payment by instalments being made at the trial, is part of the judgment, and no service or notice of it, upon or to the defendant, is necessary (*n*). Default in payment of an instalment subjects the defendant to execution for the whole amount remaining unpaid, unless the judge otherwise orders (*o*).

As to the judgment where money has been paid into court by the defendant, see *ante*, p. 145.

*Detinue.* The judgment in detinue, if for the plaintiff, will be for the value of the goods detained, together with a sum to be stated in the judgment by way of damages for the detention, and costs; but it may be made part of the order that on payment of damages for the detention, and costs, and return of the goods on or before a day to be named, satisfaction shall be entered (*p*).

*Specific delivery of goods.* The provisions of the Mercantile Law Amendment Act, 1856 (*q*), s. 2, extend to all courts of record, and hence to county courts. This section provides that in all actions and suits "for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff, and by leave of the judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered; what, if any, is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages, if any, the plaintiff would have sustained if the goods should be delivered under execution, as hereinafter mentioned, and what damages if not so delivered. And thereupon, if judgment shall be given for the plaintiff, the court, or any judge thereof, at their or his discretion, on the application of the

(*m*) 19 & 20 Vict. c. 108, s. 45, form 24. See *ante*, p. 185.

(*n*) *Robinson v. Gell*, 12 C. B. 191; 21 L. J. C. P. 155; *Ely v. Moule*, *ante*, p. 179. See order xviii., rule 2, as to service of orders generally.

(*o*) 9 & 10 Vict. c. 95, s. 95.

(*p*) Order xxxvii., rule 43. Forms of judgment, form 188; of warrant of execution, form 189.

(*q*) 19 & 20 Vict. c. 97, s. 2.



plaintiff, shall have power to order execution to issue for the delivery, on payment of such sum, if any, as shall have been found to be payable by the plaintiff, as aforesaid, of the said goods, without giving the defendant the option of retaining the same upon paying the damages assessed; and such writ of execution may be for the delivery of such goods. And if such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the court or such judge or baron as aforesaid shall otherwise order, the sheriff or other officer of such court of record shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, or within the jurisdiction of such other court of record, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages, or a due proportion thereof; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs, and interest in such action or suit" (r). It is conceived that these provisions extend to all cases to which they are applicable, whether tried by jury or by the judge alone.

A registry of county court judgments is provided by 15 & 16 Vict. c. 54, s. 18, and the judgments of the City of London Court are registered under the same provisions (s). So also judgments and orders in Admiralty actions (t).

*Payment of money under judgments.* All money paid under judgments, whether by instalments or otherwise, must be paid into court, and not to the plaintiff (u). The payment may be made during office hours on every day on which the office is open (v). An acknowledgment in writing will be given (w). The registrar must give notice (x) to the plaintiff of every payment made, except when, in case of an instalment, it does not exceed ten shillings (y). Money paid into court under a judgment will be appropriated first in satisfaction of the court fees and costs, and then in satisfaction of the original demand (z).

(r) For forms of judgment and warrants of execution, see forms 194, 195, and 196.

(s) Order xxxvii., rule 51.

(t) *Ibid.*, rule 52.

(u) 19 & 20 Vict. c. 108, s. 45. See *Davis v. Fletcher*, 2 E. & B. 217; 22 L. J. Q. B. 429; and see *Reg. v. Clerk of Surrey*, 21 L. J.

Q. B. 310; S. C., *nom. Reg. v. Fletcher*, 2 E. & B. 279, decided under 9 & 10 Vict. c. 95, s. 92 (now repealed).

(v) Order ii., rule 8.

(w) *Ibid.*, rule 10.

(x) Form 25.

(y) Order xviii., rule 7.

(z) Order xxxvi., rule 5.



Money is obtained out of court, whether paid under a judgment or otherwise, upon production of the plaint-note (*a*), or duplicate, as provided below. In the event of the original being lost or destroyed, on proof, by affidavit or otherwise, to the satisfaction of the registrar that the person applying is the plaintiff or his duly authorised agent, and that he is entitled to the moneys payable in the action, the registrar may, from time to time, issue a duplicate (*b*). If the person entitled to the money does not reside or carry on business in the district of the court in which the money has been paid, he may send by post or otherwise to the registrar of the court in which the money has been paid, the plaint-note, and a receipt (duly stamped where necessary), with a request that the money may be transmitted to him by post; and the registrar must then send to such person a crossed cheque or post-office order, less the cost of remittance by registered post letter. The remittance will be at the risk of the person to whom, and at whose request, it is made (*c*). The several districts of the metropolitan courts are to be considered *inter se* as one district only for the purposes of this rule (*d*). Hence a person residing or carrying on business in one district of the metropolis cannot obtain payment through the post of money paid to his credit in the court of another district of the metropolis (*e*).

Searches may be made, and money due to suitors will be paid out of court in cash, if required, on three days, at least, in each week, the days being fixed by the registrar from time to time, with the approbation of the judge, and being printed or written on the plaint-note. During one week in the year, of which due notice must be fixed a month beforehand in some conspicuous place in the office of the registrar, no payments will be made out of court (*f*).

**COSTS.** The costs of any action or proceeding not otherwise specially provided for are paid by or apportioned between the parties according to the order of the judge, his order being entirely discretionary; and in default of any order by the judge, the costs will abide the event of the action, and execution may issue for the recovery of them in the same

(*a*) *Ante*, p. 114. Form 7.

(*b*) Order viii., rule 1.

(*c*) Order xxxvii., rule 5.

(*d*) *Ibid.*, rule 7.

(*e*) See, as to these districts, *ante*, p. 50.

(*f*) Order ii., rule 9.

manner as for any judgment debt (*g*). The costs in all cases are taxed by the registrar (*h*).

The costs of witnesses, whether they have been examined or not, and whether they have attended the court in obedience to a summons or otherwise, may be allowed, unless the court otherwise orders. Their allowance must not exceed the scale in force (*i*). Seamen necessarily detained on shore for the purposes of an action will be allowed such remuneration as the court may think reasonable as compensation for their loss of time (*j*).

Under the powers given by the 19 & 20 Vict. c. 108, ss. 32, 33, the 30 & 31 Vict. c. 142, s. 15, and the 38 & 39 Vict. c. 50, s. 8, two scales of costs have been prepared (*k*). These scales apply to actions under 20*l.* and actions above 20*l.*, and the latter is divided into higher and lower scales.

*Court fees.* The costs which a successful plaintiff incurs necessarily include court fees, which are always in the first instance payable by the party on whose behalf any proceeding is taken, except in interpleaders, or where fees are payable in respect of keeping possession, appraising, or selling goods seized (*l*). These fees are regulated by the 19 & 20 Vict. c. 108, ss. 78, 79 (*m*). In all cases in which costs abide the event (*i.e.*, in default of an order by the judge), or where the judge makes an order for costs generally, a successful plaintiff will be entitled to recover from the defendant, as part of his costs, the court fees which he has paid, subject, however, to this proviso, that if he recovers less than the amount of his claim, so as to reduce the scale of court fees and costs, he will have to bear the difference himself, unless the reduction be caused by a set-off (*n*).

*Plaintiff recovering less than 5*l.** In the actions which could be brought under the Act of 1846, where the debt or damage claimed does not exceed 40*s.*, no costs of counsel or solicitor can be allowed. Where the plaintiff obtains judgment for less than 5*l.*, or where costs are awarded to

(*g*) 9 & 10 Vict. c. 95, s. 88.

(*h*) See the judgments in *Bellamy v. Hoyle*, L. R. 10 Ex. 220, where the point was made, but was overruled, that the statute prescribes that the judge must direct what costs are to be allowed, and that a taxation by the registrar was bad. A new rule

now directs taxation by the registrar: Order xxxvi., rule 1.

(*i*) Order xxxvi., rule 3. See *ante*, p. 157.

(*j*) *Ibid.*, rule 4.

(*k*) See Appendix I.

(*l*) 19 & 20 Vict. c. 108, s. 78.

(*m*) See Appendix I.

(*n*) Order xxxvi., rule 13.

the defendant, and the claim is less than 5*l.*, no fee to counsel or solicitor will be allowed unless by order of the judge (*o*). Ten shillings for attendance in court and three shillings for preparing particulars may be allowed to solicitors, and 1*l.* 3*s.* 6*d.* fee to counsel, and no more (*p*).

*Amount recovered exceeding 5*l.* and not exceeding 20*l.** The order of the judge in such actions as above, where the claim does not exceed 20*l.*, seems to be necessary to obtain the allowance to counsel and solicitors (*q*). The fee of the former must not exceed the amount mentioned above; the allowance to a solicitor for attendance in court may be 15*s.* (*r*). A division is made, as will be seen in the Appendix, between cases where the amount recovered does not exceed 10*l.*, and those where it does, and a more liberal allowance for work done by solicitors out of court is permitted by this scale.

*Claim exceeding 20*l.** Where the debt or damage claimed exceeds 20*l.*, the 9 & 10 Vict. c. 95, s. 91, no longer fetters the allowance of costs either to counsel or solicitors. The scales of costs, divided into a lower and higher scale, will be found in Appendix I; and the directions as to taxation are, that the registrar is to tax the bills of costs of defendants upon the lower scale when the subject-matter does not exceed 100*l.*, and upon the higher scale when it exceeds 100*l.* or when the action is brought under sections 11 or 12 of the County Courts Act, 1867. He is to tax the bills of costs of plaintiffs on the lower scale when the sum recovered or the subject-matter does not exceed 100*l.*, and upon the higher scale when the sum recovered or the subject-matter exceeds 100*l.*, or when the action is brought either under sections 11 or 12 of the Act of 1867, unless in any case the judge otherwise orders (*s*). The division into actions above and below 20*l.* seems to be unfortunate, as in equity cases there is no money claim; but the scales are evidently intended to apply to all actions whatsoever, the guide being the money claim when there is one; if not, the value of the subject-matter of the action. In plaints for the recovery of tenements, and in actions of replevin, where the court fees are paid on 5*l.* or upwards, costs may be allowed to solicitors upon the scale applicable to actions of

(*o*) 9 & 10 Vict. c. 95, s. 91.

(*p*) *Ibid.*, Appendix I.

(*q*) But see the judgment in  
*Re Keighley*, 9 C. B. 339; 19 L. J.  
C. P. 166.

(*r*) 9 & 10 Vict. c. 95,  
s. 91.

(*s*) See note at end of Appen-  
dix I.

contract, where the amount claimed exceeds 20*l.*, if the judge so orders (*t*).

When a claim exceeds 20*l.*, and less than 20*l.* is recovered, the judge may order that costs may be allowed on the scale applicable to actions where more than 20*l.* is recovered. If the defendant succeeds, and the claim exceeds 20*l.*, he may recover costs according to the same scale if the judge so orders (*u*).

Where, from the amount or from the nature of any defence or counter claim, the costs in an action for recovering or enforcing the same would be taxed upon a higher scale than that applicable to the action in which such defence or counter claim is made, then the costs must be taxed on the higher scale (*v*).

Costs in actions, where the parties give jurisdiction to the court under the 19 & 20 Vict. c. 108, s. 23 (*w*), must be taxed according to the scale of taxation used in the high court, so far as it is directly applicable; and where it is not so applicable the principle of that scale must be followed (*x*).

Where two or more defendants are joined, and judgment is given separately against each with costs, the costs must be apportioned according to the respective amounts of each judgment, unless the judge otherwise orders (*y*).

*Judgment by default* (*z*). The scale of costs allowed in cases under 38 & 39 Vict. c. 50, s. 1, where the sum claimed exceeds 40*s.*, will be found in Appendix I.

*Actions sent by high court* (*a*). The costs incurred previous to the transmission of the cause under 30 & 31 Vict. c. 142, ss. 7, 10, must be taxed according to the scale of costs and fees in the high court (*b*). The costs in the county court will, it is conceived, be allowed according to the county court scale only (*c*).

*Costs between attorney and client.* By the original County Court Act it is provided that no person, not being an attorney admitted to one of the superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in a

(*t*) Order xxxvi., rule 10. This is authorised by 30 & 31 Vict. c. 142, s. 15.

(*u*) Order xxxvi., rule 11.

(*v*) *Ibid.*, rule 12.

(*w*) *Ante*, p. 17.

(*x*) Order xxxvi., rule 9.

(*y*) Order xvi., rule 15.

(*z*) *Ante*, p. 126.

(*a*) *Post*, chap. x.

(*b*) Order xxxvi., rule 2.

(*c*) See *Wheatcroft v. Foster*, E. B. & E. 737; 27 L. J. Q. B. 277.

county court. And that no attorney shall be entitled to have or recover *therefore* any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage shall be more than 5*l.*, or more than 15s. in any case within the Act (*d*). Under this section it was held that the restrictions did not apply to business done out of court before the suit was commenced, and that for it the attorney was entitled to his usual costs (*e*). But a subsequent statute provides that in any action where the claim does not exceed 20*l.*, the attorney shall not be entitled to recover from his client any further costs or charges *in the conduct of such suit* than those mentioned in the above section, unless upon taxation of costs the registrar be satisfied that the client has, by writing under his hand, agreed to pay further costs or charges, in which case the registrar may allow any costs or charges not exceeding the amount which may have been agreed to be paid (*f*). This section was apparently intended to alter the law as explained by *Re Keighley*; but if that decision is carefully examined, it appears doubtful whether or not its object is accomplished.

The costs as between party and party, and as between solicitor and client, are placed upon the same basis by the scale in Appendix I; and all costs and charges between solicitor and client may, on the application of either solicitor or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred; but his taxation may be reviewed by the judge on the application of either party. No costs or charges may be allowed on such taxation which are not sanctioned by the scale then in force, unless the registrar be satisfied that the client has agreed in writing to pay them, when they may be allowed. No solicitor will have a right to recover from his client any costs or charges in respect of the proceedings in such actions, unless they have been allowed either on such taxation, or on the taxation of a master of the high court (*g*). See below as to the finality of the judge's decision as to reviewing a taxation.

*Taxation between party and party.* All costs and charges between party and party must be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge on applica-

(*d*) 9 & 10 Vict. c. 95, s. 91.

(*e*) *Re Keighley*, 9 C. B. 339;  
19 L. J. C. P. 166.

(*f*) 19 & 20 Vict. c. 108,

s. 36.

(*g*) *Ibid.*, ss. 33, 35.

tion of either party; and no costs or charges will be allowed on such taxation which are not sanctioned by the scale then in force (*h*). If the judge, in the exercise of his discretion, refuses to review the taxation, the court above cannot direct him to do so (*i*); and no appeal lies to the court above against a taxation (*j*).

(*h*) 19 & 20 Vict. c. 108, ss. 33,      (*i*) *Clifton v. Furley*, 7 H. & N.  
34. See order xxxvi., rule 1.      783; 31 L. J. Ex. 170.  
(*j*) *Carr v. Stringer*, E. B. & E. 123; 4 Jur. N. S. 439.

## CHAPTER VI.

### NEW TRIAL, STAYING EXECUTION, AND APPEAL.

THE judgment of the court, until disturbed in one of the modes now about to be mentioned, is final and conclusive between the parties. The judge has no power to alter his judgment after it has once been formally given (*a*); and no fresh action can be maintained which involves the consideration of the identical matters which have been adjudicated upon, although the claim may be put in a different form (*b*). If either party is dissatisfied with the result of the trial, on the ground of the verdict being against the weight of evidence, or of misdirection in point of law by the judge, or for other sufficient cause, he may apply to the judge for a new trial, and in some cases may appeal to the high court. It is specially enacted (*c*) that no other forms of appeal than those now about to be mentioned, and provided by the County Courts' Acts, shall be allowed.

**NEW TRIAL.** The judge may in any action, if he thinks fit, grant a new trial, and in the meantime stay proceedings (*d*). This provision extends to cases tried by jury as well as those tried by the judge himself (*e*). This power is also clearly applicable to equity actions, not only on the grounds stated already (*f*), but under the power which an equity judge always had to order a rehearing (*g*).

An application for a new trial, or to set aside proceedings, may be made and determined on the return-day, if both

(*a*) See *ante*, p. 182.

(*b*) See *ante*, p. 185.

(*c*) 13 & 14 Vict. c. 61, s. 16.

(*d*) 9 & 10 Vict. c. 95, s. 89, forms 107, 108.

(*e*) As to the power to grant

new trials of actions of contract and tort sent for trial by the high court, see chap. x.

(*f*) *Ante*, p. 2.

(*g*) See 28 & 29 Vict. c. 99, s. 2.



parties be present; or the application may be made at the first court after the expiration of twelve clear days (*h*) from the day of hearing. The intending applicant, in the latter case, must, seven clear days before the holding of the court at which it is intended to apply, deliver to the registrar at his office, and also give to the opposite party, by serving the same personally, or by leaving it at his place of abode or place of business, a notice in writing, signed by himself or his solicitor or agent, stating that the application is intended to be made at such court, and setting forth shortly the grounds of the application (*i*). The rule as to notice, and the length of notice, is a mere directory rule of practice; and if the judge, in the exercise of the discretionary power vested in him by the statute, thinks fit to grant a new trial, although the rule has not been complied with, he may do so (*j*); so it is apprehended, the right to notice may be waived by the opposite party (*k*).

The notice will not operate as a stay of proceedings unless the judge shall so order; but any money paid into court under any execution or order in the action, if not paid out, will be retained to abide the event of the application, or until the judge otherwise orders. If no application be made, the money will, if required, be paid out to the party in whose favour the order was made, unless the judge otherwise orders. If notice be not given in accordance with the rule, or if no application be made at the court mentioned in the notice, no application for a new trial, or to set aside proceedings, may be subsequently made, unless by leave of the judge, and on such terms as he may think fit (*l*). An application to set aside a nonsuit must be made in the same manner, and will be subject to the same conditions, as if the verdict had been entered for the defendant (*m*).

If a matter of law is involved in the case, an appeal may lie to the high court, under the provisions noticed below. But if the point is reserved by the judge, and motion is afterwards made and refused, the right of appeal vests on the refusal of the new trial, and not on the day of trial (*n*). It seems that the party may please himself

(*h*) See, as to, "clear days," *post*, chap. vii.

(*i*) Order xxviii., rule 1.

(*j*) *In re Carter*, *Carter v. Smith*, 4 E. & B. 696; 24 L. J. Q. B. 141.

(*k*) *Park Gate Co. v. Coates*, *post*, p. 204.

(*l*) Order xxviii., rule 1.

(*n*) *Ibid.*, rule 3. *Sacante*, p. 183.

(*n*) *Foster v. Green*, 6 H. & N. 793; 30 L. J. Ex. 263.

whether he moves the county court judge, according to the leave reserved, or appeals at once to the superior court (*o*). The judgment on an application for a new trial is final, and, if he refuses it, the judge cannot afterwards change his mind and grant it (*p*).

*Jury.* In granting a new trial, the judge may make it a condition that it shall take place before a jury, although the former trial did not take place before a jury (*q*); and either party may demand a jury on the new trial, although there was none at the first (*r*).

*Costs.* If a new trial is granted on payment of costs, which are afterwards paid, the party accepting them is precluded from objecting to the order (*s*). The judge has the same power over the costs of the new trial as over the first (*t*).

*When defendant does not appear.* Where a defendant does not appear at the trial, and judgment is given in his absence, the judge may, on terms, on sufficient cause being shown, at the same or any subsequent court, set aside the judgment, and grant a new trial (*u*). The provisions above mentioned do not apply to such cases (*v*). The judge has, however, the same power over the costs; and there seems to be nothing to prevent either party from requiring a jury on the new trial.

**STAYING EXECUTION.** If the judge at any time is satisfied by evidence, on oath or otherwise, that a defendant is unable from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, he may, in his discretion, suspend or stay any judgment, order, or execution for such time, and on such terms, as he thinks fit; and so from time to time until it shall appear by like proof that such temporary cause of disability has ceased (*w*).

As to staying execution pending an application for a new trial, see *ante*, p. 195, and pending an appeal, *post*, p. 204. No judgment or execution may be stayed, delayed, or reversed upon or by any writ of error or

(*o*) *Outlawite v. Hudson*, 7 Ex. 380; 21 L. J. Ex. 151.

(*p*) *Great Northern Railway Co. v. Mossop*, 17 C. B. 130; 25 L. J. C. P. 22.

(*q*) Order xxviii., rule 2.

(*r*) *Reg. v. Haywood*, 1 B. C. C. 144; 22 L. J. Q. B. 127.

(*s*) *Sparrow v. Reed*, 6 D. & L. 633; 17 L. J. Q. B. 183.

(*t*) For form of order for new trial, see forms 107, 108.

(*u*) See *ante*, p. 179.

(*v*) Order xxviii., rule 1.

(*w*) 9 & 10 Vict. c. 95, s. 105, form 104.

supersedeas thereon, to be sued for the reversing of any judgment given in a county court (*x*). No general power of staying execution appears to exist, see *ante*, p. 185.

**APPEAL.** The parties may, if they please, before any decision or judgment is pronounced, agree by writing (*y*), signed by themselves or their solicitors or agents, that the decision of the judge shall be final. The agreement will require no stamp (*z*).

*Statutes as to appeals.* The general provisions relating to appeals to the high court in common law actions are contained in the 13 & 14 Vict. c. 61, ss. 14, 15; 15 & 16 Vict. c. 54, ss. 2, 3; 30 & 31 Vict. c. 142, s. 13; and 38 & 39 Vict. c. 50, s. 6; and in equity actions in the 28 & 29 Vict. c. 99, s. 18. The provisions in the latter actions are somewhat different from those in common law actions, especially in regard to length of notice of appeal. Although uniformity is desirable, and the rules are apparently intended to secure it, it is conceived that in equity actions the appellant can hardly be deprived of the right which the statute gives him when the appeal is by case. The provisions affecting such appeals will therefore be found in chap. xiv. As will be seen hereafter, two modes of appeal now exist—by case and by motion. As to the court or judge to which the appeal lies, see *post*, p. 208.

*When it lies.* Prior to the Act of 1867, the judge of the county court had no control over appeals. The appeal only lay in cases where the amount claimed exceeded 20*l.* (*c*), and whilst his consent was not required to enable the dissatisfied party to appeal, and he had no power to prevent him from doing so, he could not give the court of appeal jurisdiction by consenting to an appeal if the amount claimed did not exceed 20*l.* (*d*). In regard to appeals under the 13 & 14 Vict. c. 61, where the claim exceeds 20*l.*, the law remains as it was before the Act of 1867; but the county court judge may now give leave to appeal in all actions in which an appeal was not formerly allowed (*e*). There is no appeal where the rules of practice are entirely disregarded; so where the parties to an action in the

(*x*) 9 & 10 Vict. c. 95, s. 108.

(*y*) Form 97.

(*z*) 19 & 20 Vict. c. 108, s. 69.

(*c*) *Blowers v. Rackham*, 20 L. J. Q. B. 397; 17 L. T. 94.

(*d*) See 13 & 14 Vict. c. 61, s. 14, and *Blowers v. Rackham*, *supra*

(*e*) 30 & 31 Vict. c. 142, s. 13.

superior courts agreed to try the case in a county court, and without any order, and without entering a plaint, they tried it before him as arbitrator, it was held that no appeal would lie (*f*).

If the claim in the action exceeds 20*l.*, the right of appeal exists, although the verdict is for a less sum (*g*), and the defendant cannot be deprived of his right by the plaintiff abandoning at the hearing the excess of his claim over 20*l.* (*h*). Yet the court of appeal, in ascertaining whether or not the appeal is rightly brought, will consider whether or not the plaintiff could legally have recovered more than 20*l.*; so where an action was brought against a bailiff for neglect to levy a debt and costs amounting to 12*l.* 17*s.* 8*d.*, and 20*l.* 15*s.* was claimed, it was held that, as the plaintiff could not have recovered more than 12*l.* 17*s.* 8*d.*, no appeal would lie (*i*). In interpleader proceedings, an appeal as to which is granted by the 19 & 20 Vict. c. 108, s. 68, an appeal lies where the value of the goods seized exceeds 20*l.*, although the claim in the original plaint is below 20*l.*, and the claimant, to prevent the goods from being sold, has paid it (*j*).

The section of the 13 & 14 Vict. c. 61, provides that if either party "shall be dissatisfied with the determination or direction of the court in point of law, or upon the admission or rejection of any evidence," he may appeal. It has been held that no appeal lies, under these provisions, upon a mere question of fact (*k*); but if the inferences drawn by the judge from the matters of fact and evidence could not have been arrived at without an error in point of law, the appeal will lie, though it seems that it would not, if without mistake of law the judge could have arrived at his decision, however unsatisfactorily (*l*). The appeal lies whether the action is tried by the judge himself or with the assist-

(*f*) *Pearce v. Winkworth*, 28 L. T. N. S. 710.

(*g*) *Harris v. Dreesman*, 9 Ex. 485; 23 L. J. Ex. 210.

(*h*) *North v. Holroyd*, L. R. 3 Ex. 69; 37 L. J. Ex. 42; 17 L. T. N. S. 575. As to abandoning excess, see *ante*, p. 19.

(*i*) *Mayer v. Burgess*, 4 E. & B. 655; 24 L. J. Q. B. 67. See 9 & 10 Vict. c. 95, s. 115.

(*j*) *Vallance v. Naish*, 2 H. & N. 712; 27 L. J. Ex. 142.

(*k*) *East Anglian Railway Co.*

*v. Lythgoe*, 10 C. B. 726; 20 L. J. C. P. 84.

(*l*) *Cawley v. Furnell*, 12 C. B. 291; 20 L. J. C. P. 197; *Cuthbertson v. Parsons*, 12 C. B. 304; 21 L. J. C. P. 165. Compare the decisions upon errors of fact going to jurisdiction, *ante*, pp. 71, 73. In *British Industry Assurance Co. v. Ward*, 17 C. B. 644, the decision of the court of appeal seems to have been entirely upon a question of fact, but it cannot be relied on as an authority.

ance of a jury (*m*). In cases in which the trial is by jury, the misdirection of the judge in point of law, or the wrong reception or rejection of evidence, would afford a good ground of appeal; but in view of the decisions already noticed, and the words of the section, it is open to grave doubt whether an appeal would lie to the high court merely on the ground that the verdict was against the weight of the evidence. Such a matter as that might be cured by the judge himself granting a new trial; and, apart from the matter of law involved, it is unusual for the superior courts to grant a new trial in a cause brought in a superior court upon that ground, unless the judge who tried it is dissatisfied with the verdict. How far the Act of 1867, which provides that, with leave of the judge, an appeal shall be allowed in actions in which no appeal lay at the time of the passing of the Act, extends the power of the appeal court, and imposes upon it the obligation to hear and adjudicate upon any question, whether of law or fact, which the county court judge thinks fit to submit to the court, must, in the absence of express decision, be considered doubtful. It is submitted that the object of the section was to extend the provisions of the 13 & 14 Vict. c. 61, to actions in which the claim does not exceed 20*l.*, and also to give an appeal in cases not coming within the 13 & 14 Vict. c. 61, in which by inadvertence there was no appeal, and not to give an appeal upon questions of fact.

There is no appeal in an interlocutory matter, such as a taxation of costs (*n*), though it may now be that an appeal may be allowed on a question of costs involving a principle as to which the judge has made a mistake (*o*). It is conceived that no appeal would lie against an order of commitment made under the Debtors Act, 1869.

There is an appeal on the same grounds, and subject to the same conditions, as are provided by the 13 & 14 Vict. c. 61, in all actions of replevin where the amount of rent or damage exceeds 20*l.* (*p*), and in all actions for the recovery of tenements where the yearly rent or value of the premises exceeds 20*l.* (*q*), and in all actions of ejectment, and in all

(*m*) See *Cawley v. Furnell*, and *East Anglian Railway Co. v. Lythgoe*, *supra*.

(*n*) *Carr v. Stringer*, E. B. & E. 123; 4 Jur. N. S. 439.

(*o*) See *Hares v. Lea*, L. R. 10

Eq. 683; 18 W. R. 1083; *Cotterill v. Stratton*, L. R. 8 Ch. 295; *Cooper v. Busbridge*, 16 L. T. N. S. 5.

(*p*) 19 & 20 Vict. c. 108, s. 68, *post*, chap. xii.

(*q*) *Ibid.*, *post*, chap. xiii.

actions in which the title to any corporeal or incorporeal hereditament shall have come in question (*r*), and in proceedings in interpleader where the money claimed, or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds 20*l.* (*s*), and in all actions where the parties agree that the court shall have jurisdiction (*t*). No appeal will lie in any case if before judgment the parties agree in writing, signed by themselves or their solicitors or agents, that the decision of the judge shall be final. No stamp is required on such agreement (*u*).<sup>1</sup>

Unless the right of appeal has been renounced, it is conceived that in the cases mentioned in the last paragraph there is an appeal as of right, without consent of the judge, if the case comes within the particular words of the statute applying to it, and that the 13 & 14 Vict. c. 61, s. 14, does not operate to limit the cases in which the appeal may be had as of right to those in which there is a debt, damage, or demand exceeding 20*l.* So upon an interpleader, it has been held that an appeal lies where the value of the goods seized exceeds 20*l.*, although the original claim in the action was below 20*l.* (*v*). If the construction contended for be the right one, it would follow that in *all* actions of ejectment, and in all actions in which title comes in question, and in all actions in which jurisdiction is given to the court by agreement of the parties (unless the right of appeal has been renounced), an appeal will lie irrespective of the consent of the judge. Nevertheless, until the point is decided, appellants would be wise to obtain leave to appeal unless, in those cases in which there is a money claim, the amount claimed exceeds 20*l.* So it would appear (*w*) that the right of appeal exists in all equity actions (*x*).

Where in a case in which the amount claimed exceeded 20*l.*, the judge, upon the special finding of the jury, directed a verdict for the defendant, but reserved leave for the plaintiff to move to enter a verdict or for a new trial, and afterwards refused an order on motion by the plaintiff in the county court, it was held that he still had a right of

(*r*) 30 & 31 Vict. c. 142, s. 13, *post*, chap. xiii.

(*s*) 19 & 20 Vict. c. 108, s. 68, *post*, chap. viii. See *Vallance v. Naish*, *ante*, p. 199.

(*t*) *Ibid.* No appeal lay before this section: *Groves v. Janseons*,

9 Ex. 481; 23 L. J. Ex. 91. See *ante*, p. 17.

(*u*) *Ibid.*, s. 69, form 97.

(*v*) *Vallance v. Naish*, *ante*, p. 199.

(*w*) 28 & 29 Vict. c. 99, s. 18.

(*x*) See *ante*, pp. 4, 198, as to these appeals, and chap. xiv.



appeal, and that it dated from the day of the refusal of the motion in the county court (*y*).

The points intended to be relied on as grounds of appeal ought to be clearly raised before the county court judge (*z*); but after making the point, and the judge ruling against him, the right of appeal is not lost by a party proceeding with his case. So where a defendant submitted at the close of the plaintiff's case that there was no evidence to go to the jury, and after the judge had ruled against him, called witnesses, and the verdict was found against him, it was held that he was not precluded from appealing (*a*).

**APPEAL BY CASE.** Two methods of appeal now exist—by case and by motion. The practice now under consideration applies to appeal by case only (*b*).

*Statement of dissatisfaction.* Any party dissatisfied with the judgment, order, or direction of the court in point of law, or upon the admission or rejection of evidence, may, before the rising of the court, on the day on which judgment is pronounced, deliver to the registrar a statement in writing, signed by him, his counsel, or solicitor, containing the grounds of his dissatisfaction (*c*). This statement is, it is conceived, framed somewhat upon the principle of a bill of exceptions in the high court. Except as putting upon record the dissatisfied party's objections, the statement does not appear to be of great practical utility unless the judge immediately stays proceedings. The rule already cited is framed as if the delivery of the statement would operate of itself as a stay of proceedings, but there appears to be no sufficient reason for that supposition. In the event of no statement being delivered, the successful party may proceed on the judgment unless the judge shall otherwise order; and the judge may direct proceedings to be taken on the judgment notwithstanding that a statement has been delivered. The party dissatisfied may, however, appeal on grounds different from those contained in such statement, and although he has delivered no such statement (*d*).

(*y*) *Foster v. Green*, 6 H. & N. 793; 30 L. J. Ex. 263.

(*z*) *Watson v. Ambergate Railway Co.*, 15 Jur. 448; *Yorke v. Smith*, 21 L. J. Q. B. 53. See remarks of Willes, J., on questions of jurisdiction, *ante*, p. 76.

(*a*) *Great Northern Railway*

*Co. v. Rimell*, 18 C. B. 575; S. C., *nom. Great Western Railway Co. v. Rimell*, 27 L. J. C. P. 201.

(*b*) Order xxix., rule 12.

(*c*) *Ibid.*, rule 1. See form 5, Appendix F.

(*d*) *Ibid.*, rule 1.



*Notice of appeal.* Whilst the statement referred to in the last paragraph is not imperative, and does not bind the dissatisfied party to appeal on the same grounds which are contained in it, it is essential that notice of appeal and security should be given by the appellant. This notice must be given by post or otherwise (*e*) within ten days of the determination or direction complained of (*f*). The days are reckoned exclusive of the day of trial (*g*). If the judge reserves a point, and upon motion in the county court afterwards decides against the party moving, the right of appeal and time for notice and security are to be reckoned from the day when the motion was refused, and not from the day of trial (*h*). The notice must be in writing, signed by the appellant, his solicitor, or agent; it must state the grounds on which the party appeals; and it must be served by post or otherwise on the registrar as well as on the successful party (*i*). Where judgment is reserved and notice of the judgment is afterwards sent to the parties, for the purposes of appeal the date of the judgment is the date of the notice, and not of the day for which the judgment is ordered to be entered up (*j*).

The respondent is entitled to have the grounds of the appeal stated in the notice, so long as the appellant is not excused by reason of the act of the court or of the respondent himself: "Thus, if the judge were to pronounce judgment at one court-day, and to state the grounds of his decision at a future day, after the expiration of the ten days, the appellant might be unable to show his grounds of appeal. In that case, I think that if the grounds were given as early as possible after the latter day, the delay would be the act of the court, and the appellant would be excused" (*k*). So the respondent may, by settling the appeal-case in conjunction with the appellant, or by attending before the judge upon the signing and settlement of the case, without raising the objection, waive his right to object (*l*). It would appear from the decisions that the sufficiency of the notice in this respect is a matter for the

(*e*) See, as to computation of time, *post*, chap. vii.

(*f*) 13 & 14 Vict. c. 61, s. 14; order xxix., rule 3.

(*g*) Order xxix., rule 2.

(*h*) *Foster v. Green*, *ante*, p. 202.

(*i*) Order xxix., rule 3; form 6, Appendix F.

(*j*) *Waterton v. Baker*, *per* Cockburn, C.J., L. R. 3 Q. B. 176;

*Francis v. Dowdeswell*, *per* Lord Coleridge, C.J., L. R. 9 C. P. 430.

(*k*) *Per* Brett, J., *Francis v. Dowdeswell*, L. R. 9 C. P. 423; S. C., 43 L. J. C. P. 248.

(*l*) See *per* Wightman, J., *Cannon v. Johnson*, 21 L. J. Q. B. 167, and *per* Erle, J., *Evans v. Mathews*, 26 L. J. Q. B. 166.

decision of the county court judge himself, and that, the appeal-case being in theory a case stated by him for the opinion of the court, the grounds of appeal are merely information for him in preparing the case. Hence the courts refuse to entertain objections to the hearing of appeals on the ground that the notices of appeal do not contain the grounds of appeal (*m*).

The right to have any notice of appeal whatever may be waived by the respondent, notice not being a condition precedent to the jurisdiction of the appeal court, but a matter of procedure imposed for the benefit of the respondent, which he may waive (*n*); unless he waives it, however, expressly or by implication, or unless by some act of the respondent or of the court the appellant is excused, he must give the required notice, otherwise his appeal will be struck out (*o*).

The notice of appeal will not operate as a stay of execution or of proceedings under the decision appealed from, unless the judge otherwise orders; but the registrar must detain the proceeds of any execution which may then be, or may come into his hands pending such appeal, unless the judge otherwise orders (*p*).

*Security.* In addition to giving notice of appeal, the dissatisfied party must, within the ten days specified for the giving of notice, give security for the costs of the appeal, and if it is the defendant who is appealing, he must, in addition, give security for the amount of the judgment. No security for the amount of the judgment will be required if the judge has ordered the appellant to pay the amount into court and it has been paid (*q*). The general provisions as to security, applying to all cases where security is required to be given, will be found in the next chapter, and it will there be found that security may be given either by bond or by deposit of money in court. It is proposed here to consider only those cases affecting appeals (*r*).

(*m*) *Cannon v. Johnson*, 21 L. J. Q. B. 164; *Evans v. Mathews*, 26 L. J. Q. B. 166; 3 Jur. N. S. 295.

(*n*) *Park Gate Co. v. Coates*, L. R. 5 C. P. 634; 39 L. J. C. P. 317; 18 W. R. 928; 22 L. T. N. S. 658; *Ward v. Raw*, L. R. 15 Eq. 83; 21 W. R. 116.

(*o*) *Stone v. Dean*, E. B. & E. 504; 27 L. J. Q. B. 319; *Norris*

*v. Carrington*, 16 C. B. N. S. 10; and see judgments in *Francis v. Dowdeswell*, *ubi sup.* See *post* as to security.

(*p*) Order xxix., rule 4.

(*q*) 13 & 14 Vict. c. 61, s. 14.

(*r*) Forms of bond, forms 127, 128; certificate of deposit, see form 46; notice of sureties, form 47.

The same principles which have been explained in regard to the strict compliance with the statute and the rules as to notice of appeal may be said generally to apply to the giving of security, and the decisions show that a strict compliance with the terms of the rules and statute is not a condition precedent to the jurisdiction of the appeal court (s), and that "where the appellant has done all that he could to comply with the requirements of the statute and the rule, and is prevented by the act of the court or of the respondent from doing so strictly, he is not to be deprived of his appeal. But that if the appellant, having no such excuse, fails to do what is required of him, the respondent has a right to come to the court and have the appeal struck out" (t). "So, if the appellant has given his notice, and the grounds, with the names of his sureties, in due time, and an appointment is given to him to attend and complete the security, if for the convenience or by the default of the registrar—the appellant being ready with the bond and the sureties—the appointment is postponed to a future day, I should say that the appellant had done all that was required of him, and was entitled to have his appeal heard. That was the case of *Waterton v. Baker* (u). So, if the respondent chooses to waive the security (v), I apprehend the appellant would be entitled to have his appeal heard without any security being given" (w). So if the security be not completed in time through the default of the respondent, the appellant is entitled to have his appeal heard (x). Where the appellant's sureties did not attend on the day named by the registrar, and the appellant failed to prepare and bring the bond for execution on that day, it was held that he was in default and that the appeal could not be heard, though security was completed subsequently (y). And where, there being no excuse for the default of the appellant, either by reason of any act of the court or of the respondent, the appellant had failed to complete his security within the ten days, the appeal was struck out (z).

(s) *Park Gate Co. v. Coates*, ante, p. 204; *Waterton v. Baker*, L. R. 3 Q. B. 173; 37 L. J. Q. B. 65; 16 W. R. 358; 17 L. T. N. S. 468.

(t) *Per Brett, J., Francis v. Dowdeswell*, L. R. 9 C. P. 423, 432; *S. P., Blenkairne v. Statter*, 31 L. T. N. S. 413.

(u) *Ubi sup.*

(v) *Park Gate Co. v. Coates*, *ubi sup.*

(w) *Per Brett, J., Francis v. Dowdeswell*, *ubi sup.*

(x) *Waterton v. Baker*, *ubi sup.*  
(y) *Francis v. Dowdeswell*, L. R. 9 C. P. 423; 43 L. J. C. P. 248.

(z) *Stone v. Dean*, E. B. & E. 504; 27 L. J. Q. B. 319; *Norris v. Carrington*, 16 C. B. N. S. 10; and see the judgments in *Francis v. Dowdeswell*, *ubi sup.*, and *Blenkairne v. Statter*, *supra*.

When money has been deposited as security, and an acknowledgment of the payment has been given by the registrar, it cannot be objected on the hearing of the appeal that no written memorandum, setting forth the conditions of the deposit, in accordance with the 19 & 20 Vict. c. 108, s. 71, has been delivered (*a*).

A bond entered into under a notice of appeal, which is afterwards withdrawn, is available, after withdrawal of the first notice, as security under a second notice of appeal if such notice is given within the ten days (*b*). If the sureties have been approved by the registrar and the bond has been executed, it is no ground for striking out the appeal that one of the sureties is a practising solicitor (*c*).

It will be noticed that the security required in equity appeals under the 28 & 29 Vict. c. 99, s. 18, differs from that required under these provisions (*d*).

*Appeal-case.* The appeal must be in the form of a case (*e*), which must be prepared by the appellant. It is, in form and in theory, a case stated by the judge for the opinion of the high court. If the parties agree upon the facts, the case must be presented to the judge for signature. If he does not approve of the case submitted to him, both parties will be summoned to attend him when and where the judge may appoint, and at such time and place both parties will be heard as to the form of the case, and the judge must finally settle and sign it, and it must then be sealed by the registrar (*f*). This rule has apparently been framed with a view to escaping the ruling of the Court of Queen's Bench—that, when the parties have agreed upon the facts, and they are correctly stated, the judge is bound to sign the case upon its being presented to him for signature (*g*). It is conceived, however, that the rule must not be applied arbitrarily, and that if a judge improperly refused to sign a case properly stated, the high court would compel him to sign it (*h*).

If the parties cannot agree upon the case, the appellant

(*a*) *Griffith v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134; *Walters v. Coghlan*, L. R. 8 Q. B. 61; 42 L. J. Q. B. 20; 27 L. T. N. S. 712.

(*b*) *Daniels v. Charsley*, 11 C. B. 739; 21 L. J. C. P. 37.

(*c*) *Carr v. Stringer*, 4 Jur. N. S. 439, *in notis*.

(*d*) See *ante*, p. 129.

(*e*) Form 198, and chap. xiv.

This was the same in equity as well as at law previously: *Slatery v. Aston*, 14 W. R. 511; 14 L. T. N. S. 510.

(*f*) Order xxix., rule 5.

(*g*) *Irving v. Askew* (1), L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; and see *Warner v. Riddiford*, 4 C. B. N. S. 180, *post*, p. 207.

(*h*) See *ante*, p. 85.

leaves his draft case with the registrar, and the registrar then gives notice to the other side that a case has been so lodged with him, and that it will, on a day to be named in the notice, be presented to the judge to sign. On such day both parties appear before the judge and argue their respective cases, and the judge then finally settles and signs the case, and it is sealed as before mentioned (*i*).

The case should separate the facts and the law, and should be stated with reasonable conciseness (*j*). Where a case was stated by the parties at unnecessary length, the judge signing it in obedience to the county court rule, the court refused the costs of the appeal though the appellant was successful (*k*). If the case is so confused as not to show whether or not a question of law is intended to be presented for decision, the court will send it back for amendment (*l*). The observations made by the judge in delivering judgment do not legitimately form part of the case, and they cannot be referred to either as finding a fact or as giving a reason for the judgment (*m*). When the question for the court is as to the inference of law from certain facts, as reasonable and probable cause in an action for malicious prosecution (*n*), the evidence ought to be set out in the case *verbatim*, as in a bill of exceptions; so a rule was granted to compel the judge to amend a case by setting out the evidence given at the trial so far as was material to the question of reasonable and probable cause, and by setting out the depositions taken before the magistrate, and put in evidence at the trial (*o*). It seems that after the signature of the case by the parties or their solicitors the judge has no power to add to or alter it (*p*).

The case must, unless the judge otherwise orders, be presented to him for signature at the court holden next after the parties have agreed upon it, and subject to the remarks above, if the judge approves of it, it must then

(*i*) Order xxix., rule 6.

(*j*) *Cawley v. Furnell*, 12 C. B. 291; 20 L. J. C. P. 197; *Evans v. Mathias*, 7 E. & B. 590.

(*k*) *Evans v. Mathias*, *supra*.

(*l*) *London and North Western Railway Co. v. Grace*, 2 C. B. N. S. 555.

(*m*) *East Anglian Railway Co. v. Lythgoe*, 10 C. B. 726; 20 L. J. C. P. 84; and see *Chivers v. Savage*, 5 E. & B. 697; 25 L. J. Q. B. 85; *ante*, p. 75.

(*n*) As to the functions of the judge in such a case, see *Lister v. Perryman*, L. R. 4 H. L. 521; 39 L. J. Ex. 177; 19 W. R. 9; 23 L. T. N. S. 269.

(*o*) *Thornevell v. Wigner*, L. R. 6 Ex. 87; 40 L. J. Ex. 48; 24 L. T. N. S. 140; 19 W. R. 356.

(*p*) *Warner v. Riddiford*, 4 C. B. N. S. 180; and see *Irving v. Askew* (1), *supra*; and see *ante*, p. 182, for cases where the judge is *functus officio*.

be signed by the judge and be sealed with the seal of the court (*q*). This rule is, however, merely intended to prevent the right of appeal from being made an instrument of delay, and does not take away the appellant's right to have the case signed by the judge at a later court than that named in the rule. The respondent would, however, be entitled to proceed with his judgment unless the judge otherwise ordered (*r*). When signed and sealed, one copy must be deposited with the registrar, and another sent, by post or otherwise, by the appellant, to the successful party, within three clear days next after the time of signing and sealing the case. If the appellant fail to comply with the provisions of this rule, the successful party may proceed on the order or judgment, unless the judge otherwise orders (*s*). It seems doubtful what becomes of the appeal if the judge dies before signing the case (*t*).

*Transmission of case.* The case must be transmitted by the appellant to the proper officer of the high court (*u*). The appellant must, within three clear days next after the case is signed and sealed, transmit the case, with a copy under seal of the court, by post or otherwise, to the officer already mentioned; and notice of such transmission must forthwith be given by the appellant to the successful party, by post or otherwise; in default thereof the successful party may proceed on the judgment as if no appeal had been made, and shall, on application to the court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings. Instead of proceeding on the judgment, the respondent may, if he think fit, within twenty-eight clear days from the signing of the case, transmit it in the manner prescribed, and give the like notice to the appellant of such transmission (*v*). This rule does not, however, impose any condition precedent to the right of appeal; so the court heard an appeal though the copies of the case had not been sent within the prescribed time (*w*).

*To what court the appeal lies.* Before the Judicature Acts, an appeal in common law matters lay to any of the

(*q*) Order xxix., rule 5.

(*r*) *Hacking v. Lee*, 2 E. & E. 906; 29 L. J. Q. B. 204; 8 W. R. 495; *Furber v. Sturmy*, 3 H. & N. 521; S. C., *nom. Ex parte Furber*, 27 L. J. Ex. 453; and *Williams v. Williams*, 16 L. T. N. S. 581—an equity case.

(*s*) Order xxix., rule 7.

(*t*) *M'Allum v. Cookson*, 5 C. B. N. S. 498; 28 L. J. C. P. 1.

(*u*) 13 & 14 Vict. c. 61, s. 15; order xxix., rule 8.

(*v*) Order xxix., rule 8.

(*w*) *Richardson v. Silvester*, 29 L. T. N. S. 395.



three superior courts at Westminster at the choice of the appellant, and the appeal was heard as part of the ordinary business of the court in which it was brought. When the court was not sitting, the appeal might have been heard by any two or more judges, sitting as a court of appeal for the purpose (*e*); but in practice it is believed that no special court ever did sit for the sole purpose of hearing county court appeals, and that they were always heard as part of the ordinary business of the court in which the appeal was brought. In equity actions the appeal lay to such of the vice-chancellors as were named for the purpose by the lord chancellor (*y*), Malins, V.C., being, at the date of the coming into operation of the Judicature Acts, the vice-chancellor appointed to hear equity appeals.

The Judicature Act provides that all appeals from county courts which might, before the passing of the Act, have been brought to any court or judge whose jurisdiction is by the Act transferred to the high court, *may be heard* and determined by divisional courts of the high court, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose (pursuant to rules of court), or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the high court (*z*). By rules made under the above section it has been provided that each division of the high court must, before January 1, 1876, select one of the judges of such division to act until January 1, 1877, and so on before every 1st of January subsequent to January 1, 1876, to act for the twelve months next ensuing. Any two or more of the judges so selected will constitute a divisional court for the purposes of the above section; and any other judge of the high court may, by arrangement between himself and any one of the judges so selected, act for such judge in any particular case or cases, or on any particular day or days (*a*).

At the present moment no judges have been selected, and no court is sitting for the purpose of hearing county court appeals, and unless there be some arrangement for continuous sittings, periods of time will constantly arrive when there will be no court sitting. The question will then arise, how is an appeal to be dealt with? It has already caused much discussion in various courts when

(*e*) 13 & 14 Vict. c. 61, s. 14;  
15 & 16 Vict. c. 54, s. 2.

(*z*) 36 & 37 Vict. c. 66, s. 45.

(*y*) 28 & 29 Vict. c. 29, ss. 9, 18.      (*a*) Jud. Act, order lviii., rule 19 (issued Dec. 1875).



motions have been made under the 38 & 39 Vict. c. 50, s. 6; but no satisfactory solution has been arrived at. In some cases rules were granted in the common law divisions as if section 45 of the Judicature Act, 1873, had not been passed, and Malins, V.C., in one case granted a similar rule (b); but afterwards each court seemed indisposed to grant rules, and eventually motions were made before the judge specially appointed to hear matters of practice arising under the Judicature Acts, and were either granted or refused. The new rules already referred to provide that the judges, selected as above, shall make such arrangements as they may think fit, as to the manner in which application may be made to them, or any of them, in court or chambers, when the appeal is by motion (c). No judges being yet selected, no rules have been made. It is conceived that there is little difficulty about appeals by case, as the case may be at once set down to be argued before the court of appeal when it does sit; but in appeals by motion, the time for moving being limited, it is important that the appellant should always be able to find a competent tribunal to which he can apply for his rule. An application to a judge at chambers is, however, far less satisfactory than a motion in open court—the proceedings are too hurried, and the time devoted to matters too short to allow of a fair discussion of questions of any importance. It may be contended that as the section of the Judicature Acts operates to deprive the ordinary divisions of the high court of their control over appeals, it will be construed strictly, and that as the permissive word *may* only is used, an appeal may still be made by motion or case in any divisional court, as if the section had never been enacted.

The decision of the divisional court of appeal will be final unless special leave to appeal be given by the divisional court by which the appeal has been heard (d).

*Proceedings in the appeal court.* The following provisions relating to the practice as to appeals before the Judicature Act are retained for guidance until new rules are made. Appeals must be set down for argument in the special paper, at the request of either party, four clear days (e) before the day on which the same are to be argued, and notice thereof must be given forthwith to the opposite party (f).

(b) *Eccles v. Eccles*, W.N. 1875, 194; 24 W. R. 39.

(c) Jud. Act, ord. lviii., r. 19, *sup.*

(d) 36 & 37 Vict. c. 66, s. 45.

(e) See *post*, chap. vii.

(f) Reg. H. T. 1853, 15. Power is given to the judges of the superior courts to make rules regulating appeals by 15 & 16 Vict. c. 54, s. 3.

When the respondent dies before the hearing of the appeal, the court will proceed by analogy to the 166th section of the Common Law Procedure Act, 1852. So, upon an affidavit that there were no personal representatives of a deceased respondent in an action of ejectment, and that notice had been served on the widow of the defendant, on the landlady, and on the defendant's attorney, the court heard the appeal (*g*).

Four clear days before the day appointed for argument, the plaintiff must deliver copies of the appeal-case, with the points intended to be insisted on, to the lord chief justice of the Queen's Bench or Common Pleas, or lord chief baron, as the case may be, and the senior puisne judge of the court in which the appeal is brought; and the defendant must deliver copies to the two other judges of the court next in seniority, and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the master a sufficient sum to pay for such copies. If the statements of the points have not been exchanged between the parties, each party must, in addition to the two copies left by him, deliver also his statement of the points to the other two judges, either by marking the same in the margin of the books delivered or on separate papers (*h*). It seems that the books should be delivered at the judges' chambers in Serjeants' Inn (*i*). Since the 15 & 16 Vict. c. 54, s. 2, providing for the hearing of appeals as part of the ordinary business of the court, it is not enough to deliver two paper books, and the court intimated that in future a case would not be allowed to be argued unless books were delivered to each of the judges as specified by the rule (*j*). The above rules are retained *valeant quantum* until new ones are made. Any new rules will be printed in the Addenda.

*Hearing in and order of the court of appeal.* Formerly, in the common law courts, one counsel only was heard on each side. The appellant begins, and after the respondent has been heard, the appellant may be heard in reply. The parties are bound by the case and cannot travel out of it,

(*g*) *Hemming v. Williams*, L. R. 6 C. P. 480; 24 L. T. N. S. 755; 40 L. J. C. P. 270.

(*h*) Reg. H. T. 1853, 16.

(*i*) *Howells v. Wynn*, 15 C. B. N. S. 11; 32 L. J. M. C. 211.

(*j*) *Tattersall v. Fearnley*, 17 C. B. 368, 370, *in notis*.

and only such objections can be raised as were made at the trial (*k*).

The court may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the appeal as the court may think proper, and such orders will be final (*l*).

Although the court of appeal may decline to hear an appeal on the ground that the appeal does not lie, they may yet entertain it so far as to dismiss it with costs (*m*). The court of appeal is not confined to answering the questions put by the case, but is bound to see whether on the whole case justice has been done, and if it finds that the direction of the judge to the jury, set out in the case, is wrong in point of law, it will direct a new trial (*n*). The court will not entertain points not raised by the appeal-case (*o*). Where there is a verdict of a jury, it seems that the court can do no more than grant a new trial, and cannot direct judgment to be entered; but that if the trial be before the judge alone, the court may do so (*p*). In a later case, however, the Court of Common Pleas directed a nonsuit to be entered, the trial having been before a jury; and it was held that judgment of nonsuit was in effect a judgment for the defendant, and that the court had power to order it to be entered (*q*).

When the court has pronounced judgment, either party may deposit the same, or an office copy, with the registrar of the county court, and upon being so deposited such judgment will be filed, and may be enforced as if it had been made by the county court (*r*).

When a new trial is ordered, the cause must be entered for trial at the county court which shall be holden next after twelve clear days from the time when the order or office copy has been deposited, unless the parties agree that it shall take place sooner, or the judge otherwise orders. The new trial must be conducted in the same manner as any new trial granted by the county court itself (*s*).

(*k*) *Watson v. Ambergate Railway Co.*, 15 Jur. 448; *Yorke v. Smith*, 21 L. J. Q. B. 53.

(*l*) 13 & 14 Vict. c. 61, s. 14.

(*m*) *Carr v. Stringer*, E. B. & E. 123.

(*n*) *Stanniccliffe v. Clarke*, 7 Ex. 439; 21 L. J. Ex. 129.

(*o*) *Cox v. Slater*, 14 L. T. N. S.

511; *Williams v. Evans*, L. R. 19 Eq. 547.

(*p*) *Jonas v. Adams*, 20 L. J. Q. B. 397; 17 L. T. 183.

(*q*) *Fuller v. Cleveley*, 17 Jur. 736; see *Outhwaite v. Hudson*, 7 Ex. 380; 21 L. J. Ex. 151.

(*r*) Order xxix., rule 9.

(*s*) *Ibid.*, rule 10.

If the order of the court of appeal be that judgment be entered for either party, the judgment must be entered accordingly, and the successful party will be at liberty to proceed on such judgment as on a judgment in the county court (*t*).

*Costs.* Although the court refuses to hear an appeal on the ground that the appeal will not lie, it may entertain it so far as to dismiss it with costs (*u*). It seems that the court cannot make a conditional order that the costs of the appeal shall abide the event of the new trial (*v*). On reversing a judgment and granting a new trial, it seems now settled that the whole judgment in the court below is reversed, including the order for payment of costs of the first trial (*w*). The order of the court in favour of the appellant will, it is conceived, discharge his sureties, providing that he has not been ordered to pay the costs of the appeal, a very improbable contingency. If money has been paid into court as security for the costs of the appeal, the court, in granting costs to the appellant, will order the money paid into court to be paid out to him (*x*).

Generally, the costs of the appeal are granted to the successful party, unless there is some act on the part of the appellant of which the court disapproves, and visits with the deprivation of costs. So where an appeal-case was stated at unnecessary length, costs were refused (*y*). Where a judge reserved a point of law, giving the plaintiff leave to move upon it, and instead of doing so he appealed to the court above, the court refused, in reversing the judgment, to deprive him of costs (*z*).

The Court of Common Pleas, in a considered judgment, a few years ago, after conferring with the other judges, laid down a rule that, unless there were special circumstances to take a case out of the rule, in an appeal on the ground of misdirection, and generally in all cases, the appellant, if successful, would be allowed his costs of

(*t*) Order xxix., rule 11.

(*u*) *Carr v. Stringer*, E. B. & E. 123; see, however, *Mayer v. Burgess*, 4 E. & B. 655; 24 L. J. Q. B. 67; *Groves v. Janseens*, 9 Ex. 481; 23 L. J. Ex. 91; *Lawford v. Partridge*, 1 H. & N. 621; 26 L. J. Ex. 147.

(*v*) *Gibbon v. Gibbon*, 13 C. B.

205; 17 Jur. 416; 22 L. J. C. P. 131, 135, *in notis*.

(*w*) *Gage v. Collins*, L. R. 2 C. P. 381; 36 L. J. C. P. 144; 15 W. R. 568.

(*x*) *Kelly v. Webster*, 16 Jur. 838.

(*y*) *Evans v. Mathias*, E. & B. 590.

(*z*) *Outhwaite v. Hudson*, 7 Ex. 380; 21 L. J. Ex. 151.

appeal (a). The Court of Exchequer has since, however, expressed its intention of being governed by no general rule, holding that the granting of costs is a matter of discretion in each case (b). So Stuart, V.C., refused to follow the rule in equity appeals (c). The Court of Common Pleas, however, appears to be disposed to adhere to the rule, although in the particular case it did not allow the costs (d). It is not improbable that the rule laid down in the court of appeal, under the Judicature Act, will be followed by the divisional court for hearing county court appeals—i.e., costs will generally be allowed to the party succeeding on the appeal.

Costs will not be allowed unless they are asked for at the time when the appeal is disposed of (e).

**APPEAL BY MOTION.** Where the right of appeal exists either by consent of the judge, or of right under the provisions above mentioned, the person aggrieved may appeal to the divisional court to which the appeal lies by motion instead of by case. The motion must be *ex parte* in the first instance, and must be made within eight days after the ruling, order, direction, or decision complained of has been made (f). The provisions of the Judicature Act (g) as to notice of motion do not apply to these cases (h); and it is conceived that no notice of appeal is necessary, as in case of appeal by case. If the court of appeal be not sitting, the motion may be made before any judge of the high court at chambers. At the trial in the county court, the judge, at the request of either party, must make a note of any question of law raised at the trial, or of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action, and at the expense of any party to the action requiring the same for the purpose of appeal, must furnish a copy of his note, or allow

(a) *Schroeder v. Ward*, 13 C. B. N. S. 410; 32 L. J. C. P. 150; and the cases referred to in the judgment of the court.

(b) *Conybeare v. Farries*, L. R. 5 Ex. 16; 39 L. J. Ex. 26; 21 L. T. N. S. 497. See *Gee v. Lancashire and Yorkshire Railway Co.*, 6 H. & N. 221; 30 L. J. Ex. 11.

(c) *Fallows v. Slatter*, 38 L. J. Ch. 609; 20 L. T. N. S. 513; and see *Ashley v. Sedgwick*, L. R. 15 Eq. 245; 42 L. J. Ch. 355; 28 L. T. N. S. 185.

(d) *Richardson v. North Eastern Railway Co.*, L. R. 7 C. P. 75, 83; 41 L. J. C. P. 60; 26 L. T. N. S. 131.

(e) *Taylor v. Great Northern Railway Co.*, L. R. 1 C. P. 430; 35 L. J. C. P. 210; 14 W. R. 639.

(f) 38 & 39 Vict. c. 50, s. 6.

(g) Jud. Act, order liii., rules 2, 3.

(h) So held on an *ex parte* motion in the Exchequer division in *Dillon v. Lloyd*, Michaelmas Sittings, 1875.

a copy to be taken by or on behalf of such party, and the judge must sign such copy. This copy must be produced on the motion in the court of appeal (*i*). It is conceived that the copy should be sealed with the seal of the county court, and that even if not sealed for the purposes of the *ex parte* motion, the signature of the judge need not be verified by affidavit, unless the motion be made by counsel not present at the trial (*j*); but in the case of *Dillon v. Lloyd* (*supra*), although a rule was granted without affidavit, the copy being duly sealed, the master of the court expressed an opinion that an affidavit was necessary. Until the point is decided, appellants would do well to provide themselves with the affidavit, especially as, on the argument of the rule, as will be seen below, the affidavit is probably necessary.

The court of appeal may grant the rule to show cause on such terms as to costs, security, or stay of proceedings, as it may think fit (*k*). After the rule is granted, it will be made returnable according to the practice in the appeal court, and the proceedings in the appeal court will, it is conceived, be the same as on the argument of rules generally; and on the authority of the case of *Welsh v. Mercer* (*supra*), the copy of the notes, which must be produced and used on the argument of the rule (*l*), should be verified by affidavit of the signature of the judge.

(*i*) 38 & 39 Vict. c. 50, s. 6.

(*k*) 38 & 39 Vict. c. 50, s. 6.

(*j*) *Welsh v. Mercer*, L. R. 8

(*l*) *Ibid.*

## CHAPTER VII.

### SECURITY, NOTICES, AND ORDERS.

SECURITY.—*By bond.* Where a party is required to give security, the security will be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party, or intended party, in the action or proceeding; but the court in which any action on the bond may be brought, may by rule or order give such relief to the obligors as may be just, and such rule or order will have the effect of a defeasance of such bond (*a*).

The party proposing to give the bond must serve, by post or otherwise, on the opposite party and the registrar, at his office, notice of the proposed sureties (*b*). The registrar must forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and state in the notice to the obligee that, should he have any valid objection to the sureties or either of them, it must then be made (*c*). The bond is prepared by the party proposing to give it.

The sureties must make an affidavit of their sufficiency before the registrar (*d*), unless the opposite party dispenses with the affidavit (*e*).

The bond must be executed in the presence of the judge or registrar, or a commissioner of the supreme court (*f*). The registrar has only to see that the bond is executed by the party to the cause, and that the sureties are sufficient; he cannot examine further and object to the bond on the

(*a*) 19 & 20 Vict. c. 108, s. 70.

(*b*) Form 47.

(*c*) Order xxx., rule 1.

(*d*) Form 48.

(*e*) Order xxx., rule 2.

(*f*) *Ibid.*, rule 3.



ground that the party giving the bond is by law incapable of executing a valid bond (*g*).

The bond must be deposited with the registrar until the action is finally disposed of (*h*).

If any bond given under any of the County Courts' Acts has been registered in the Court of Common Pleas in England, and the condition has been satisfied, the commissioners of the Treasury, by certificate of any two of them, may authorise the proper officer of the court to enter up satisfaction on the record of such bond (*i*).

*By deposit of money.* Instead of giving security, a party may deposit with the registrar, if the security is required to be given in a county court, or with a master of the high court, if the security is required to be given in such court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by the master or registrar, and to be signed by the party, his solicitor or agent, setting forth the conditions on which the money is deposited. The master or registrar must give a written acknowledgment of the payment (*j*). The judge of the high court or county court, as the case may be, may, on the same evidence as would have been required to enforce or avoid such bond, as mentioned above, order the sum deposited to be paid out to such party or parties as may seem just (*k*).

Where a party makes a deposit of money instead of giving a bond, he must give notice forthwith to the opposite party, by post or otherwise, of the deposit having been made (*l*).

The party giving security, or depositing money, is excused from a strict compliance with the statute, or the rules, if such compliance is rendered impossible by the act of the court or registrar, or if performance of the conditions is prevented or waived by the opposite party (*m*).

When money is deposited, any objection to receive the money without the memorandum named in the statute should be made before the acknowledgment is given by the

(*g*) *Young v. Brompton Water Works Co.*, 31 L. J. Q. B. 14; 10 W. R. 57; decided under 19 & 20 Vict. c. 108, s. 39, *ante*, p. 138.

(*h*) Order xxx., rule 5.

(*i*) 19 & 20 Vict. c. 108, s. 76.

(*j*) Form 46.

(*k*) 19 & 20 Vict. c. 108, s. 71. See, as to the practice suggested

to regain the money, *ante*, p. 138.

(*l*) Order xxx., rule 4.

(*m*) *Francis v. Dowdeswell, Waterton v. Baker, Park Gate Co. v. Coates*, *ante*, p. 205, and see *Ex parte Johnson*, L. R. 5 Ch. 741; 18 W. R. 1097; 23 L. T. N. S. 291.

registrar in the prescribed form; the want of the memorandum cannot afterwards be relied on as vitiating the deposit if the other requisite forms have been complied with (*n*).

*Forms of bonds.* See, as to bond by defendant objecting to jurisdiction (*ante*, p. 137), form 77. As to bond by defendant in an action under the Bills of Exchange Act (*post*, chap. xi.), form 49. As to bonds by plaintiff and defendant in appeals (*ante*, p. 204), forms 127 and 128; in replevin, forms 183 and 184; bond by receiver (*ante*, p. 168), form 213.

*Officers of court and solicitors.* No officer of the court may become a surety under any of the above provisions (*o*).

*Notices.* All notices should be headed and concluded according to the form in Appendix E. Where a form of notice is prescribed, it will be sufficient if the notice complies substantially with such form (*p*). All letters or notices sent by post by or to officers of the court, or by or to parties to the action, must be prepaid and not sent by book-post (*q*).

*Computation of time.* Where anything is required by the rules of practice to be done within twenty-four hours, or within a period of forty-eight hours, no part of Sunday, Christmas-day, Good Friday, the Saturday next after Good Friday, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or of any day when the offices of the courts are closed by order of the lord chancellor, may be included in the computation of such period (*r*).

It appears that in cases in which a number of "clear days" notice is required for doing any act, or for any other purpose, the days must be reckoned exclusive of the day on which notice is given, and the day on which the act is to be done (*s*). When notice may be given by post, Erle, C.J., expressed an opinion "that the notice must be put into the post in such time that, by the ordinary course

(*n*) *Griffith v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134; *Walters v. Coghlan*, L. R. 8 Q. B. 61; 42 L. J. Q. B. 20; 27 L. T. N. S. 712; *ante*, p. 206.

(*o*) Order xxx., rule 6. See *Carr v. Stringer*, 4 Jur. N. S. 439, *in notis*, *ante*, p. 206.

(*p*) Order xxxvii., rule 33.

(*q*) *Ibid.*, rule 36.

(*r*) Order xxxvii., rule 34; order i., rule 3. As to service, see *infra*.

(*s*) See *Liffin v. Pitcher*, 1 Dowl. N. S. 767, *per* Coleridge, J., and Interpretation of Terms.

of post, the party to whom it is addressed shall receive it within the time" (t) in which the notice may be validly given; so, if a notice has to be given five clear days before the hearing, it appears that, if sent by post, it ought to be sent so that five clear days might elapse after receipt of the notice, irrespective of the day on which, in the ordinary course of post, it would be received.

Where the days are not "clear days," it seems that the time should be computed exclusively of the day on which the notice is served, or, if sent by post, received, but inclusively of the last day (u).

*Orders generally (v).* Orders for payment of money or costs, or both, and orders of adjournment, when directed to be served, shall in all cases be prepared by the registrar of the home court, and delivered to the bailiff, who must, within twenty-four hours, send them, by post or otherwise, to the parties on whom they are respectively directed to be served; but it will not be necessary for the party in whose favour any order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party (w). Orders for payment of money may be enforced in the same manner as ordinary judgments (x).

Where the court gives leave to take any proceedings, it will not be necessary to draw up any order, nor will any order be drawn up to warrant such proceeding (y)—*e.g.*, leave to issue a summons in the district in which a material part of the cause of action arose.

*Service of process generally.* Service out of the jurisdiction in England is valid if made by the bailiff of any county court (z). In case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served, the service may be proved, if the judge thinks fit, in the same manner as a summons served out of the district of the court—*i.e.*, by endorsement (a)—but without additional charge to either of the parties to the suit (b).

No process may be served or executed on Sundays, Christmas-day, or Good Friday, nor may any process be

(t) *Evans v. Mathews*, 26 L. J. Q. B. 166.

(u) *Per Coleridge, J., Liffin v. Pitcher*, *ubi sup.*

(v) Form of heading and conclusion, form 2.

(w) Order xviii., rule 2. See *ante*, p. 187.

(x) Order xix., rule 1.

(y) Order xviii., rule 5.

(z) 9 & 10 Vict. c. 95, s. 61.

(a) See *ante*, p. 122.

(b) 9 & 10 Vict. c. 95,

s. 62.

served on the Saturday next after Good Friday, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or on days on which the offices of the courts shall be closed by order of the lord chancellor; but the days will be counted in the computation of the time required by the rules in respect of such service (c).

*Notice in lieu of service.* Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than an ordinary or a default summons), notice, proceeding, or document cannot be made, the judge or registrar may, upon an affidavit showing grounds of non-service, order notice by advertisement or otherwise in lieu of such service (d).

*Newspaper advertisements.* The judge or registrar shall order in what newspaper any advertisements which may from time to time be ordered in any action or proceeding shall be inserted; and the expense of such advertisements shall be paid to the registrar by the party requiring the same before they are inserted (e).

*Advertisements for "London Gazette."* All advertisements to be inserted in the "London Gazette" shall be transmitted by the registrar for insertion to the registrar of county court judgments in London (f).

*Filing of documents.* Where any particulars or other documents whatsoever are directed to be filed, they shall be filed with the registrar of the court, together with as many copies thereof as there are parties to be served, and the names, addresses, and descriptions of such parties, and an additional copy for the use of the judge if required (g).

*Notice of rejection of imperfect documents.* Where a registrar rejects any document he shall give notice, by post or otherwise, to the party offering the same for filing, of such rejection and of the reasons thereof (h).

*Documents to be distinguished by the number of the plaint and letters.* The registrar shall file all documents delivered to him in any action or matter, and shall distinguish them by the number of the plaint in respect of which they are

(c) Order xxxvii., rule 35;  
order i., rule 3. See, as to notices,  
*supra*.

(d) Order xxxvii., rule 12.

(e) *Ibid.*, rule 13.

(f) Order xxxvii., rule 14.

(g) *Ibid.*, rule 31.

(h) Order ii., rule 13. See  
form 67.

filed, and from each other, by a distinctive letter of the alphabet (*i*).

*Where no forms in schedule.* All proceedings and documents may be in forms similar to the forms in the schedule to the rules (Appendix E), where the same are applicable; and in cases where no forms are provided, parties shall frame the proceedings or documents, using as guides those contained in the schedule (*j*).

*Enlargement or abridgment of time.* The judge or registrar may, upon such terms, if any, as he may think reasonable, enlarge or abridge any of the times fixed by the rules for taking any step or filing any document, or giving any notice, in any action or proceeding (*k*).

*Sealing of documents.* Before any summons, notice, or other document, or any copy thereof, shall be issued by the registrar, the same shall be sealed with the seal of the court (*l*).

*Copies of documents to be paid for.* Copies of all proceedings or documents to be prepared by the registrar shall be prepared by him for any party requiring the same, upon payment of the costs of such copies when the order for the same is given (*m*).

*Folios.* A folio is to comprise seventy-two words, every figure being counted as one word (*n*).

(*i*) Order ii., rule 3.

(*j*) Order xxxvii., rule 21.

(*k*) *Ibid.*, rule 16.

(*l*) Order xxxvii., rule 32.

(*m*) *Ibid.*, rule 3.

(*n*) *Ibid.*, rule 4.

## CHAPTER VIII.

### ENFORCING THE JUDGMENT.

#### PART I. EXECUTION AGAINST GOODS.

THE order of the judge for payment of money resembles a judgment of the superior courts, and requires no service (*a*). Assuming that no stay of execution is ordered under any of the last-mentioned provisions, and that no appeal is presented and allowed, or new trial applied for and granted, the successful party may proceed to enforce his judgment, by execution against the goods, by attachment of debts in certain cases, and by commitment of the defaulting party under certain circumstances. He may also, in the cases to which they apply, obtain a warrant of possession or assistance, or the attachment of a person disobeying an order of the court (*b*).

If the order for payment is not complied with, the registrar, at the instance of the party obtaining the order, must issue to the high bailiff a writ of *fiery facias* as a warrant of execution (*c*). If the order is for payment by instalments, and default has been made in payment of any instalment, execution may issue, without leave, for the whole amount remaining unpaid and costs, unless the judge otherwise orders (*d*). In the event of the high bailiff being himself the judgment-debtor, the warrant may be issued to a bailiff specially appointed to execute it (*e*).

*Fees.* The fee payable upon the warrant is eighteenpence in the pound up to 20*l.* (*f*).

(*a*) *Ely v. Moule*, 5 Ex. 918;  
20 L. J. Ex. 29.

(*b*) Order xix., rules 28—31.

(*c*) 9 & 10 Vict. c. 95, s. 94.

(*d*) *Ibid.*, s. 95; order xix.,  
rule 3.

(*e*) *Bellamy v. Hoyle*, L. R.  
10 Ex. 220; 44 L. J. Ex.  
169.

(*f*) 19 & 20 Vict. c. 108, s. 78.,  
Appendix I.

*Judgments over six years old.* No warrant against the goods may issue on a judgment more than six years old, unless some payment by the judgment-debtor has been made into court within twelve months previously, or unless by leave of the judge. No notice to the defendant of the application for leave is necessary, but the leave must be expressed on the warrant (*g*).

*Cross-judgments.* If there are cross-judgments between the parties, execution must be taken out only by the party who has obtained judgment for the larger sum, and for so much as remains after deducting the smaller sum, and satisfaction for the remainder must be entered, as well as satisfaction on the judgment for the smaller sum. If both sums are equal, satisfaction must be entered upon both judgments (*h*).

As to execution by a person not a party to the suit, and in case of death of parties, see *ante*, p. 108.

*Married women.* Where a married woman is sued as if she were single, and she obtains judgment on the ground of coverture, and is awarded costs, she may enforce payment in her own name (*i*).

*Priority of execution.* The registrar must enter in the execution-book and on the warrant the precise time when the application for the warrant was made, and the warrants must be executed according to their priority in point of time (*j*). If execution is issued against the goods of the same person by the high court and also by a county court, the right to the goods seized will be determined by the priority in point of time of the delivery of the writ to the sheriff, and of the application to the registrar for the warrant. The sheriff must, on demand, by writing, signed by any clerk in the office of the under-sheriff, inform the bailiff of the precise time of the delivery of the writ; and the bailiff, on demand, must show his warrant to any sheriff's officer; and the writing purporting to be so signed and the endorsement will respectively be sufficient justification to any high bailiff or sheriff acting thereon (*k*).

*Warrant of execution.* The warrant is prepared by the registrar, who must issue it forthwith after it is applied for (*l*). The high bailiff must execute the warrant as soon as possible, must enter it in the proper book, and must

(*g*) Order xix., rule 32.

(*h*) 9 & 10 Vict. c. 95, s. 93.

(*i*) Order xix., rule 33.

(*j*) 19 & 20 Vict. c. 108, s. 46.

(*k*) *Ibid.*, s. 47.

(*l*) Order ii., rule 4.



state from time to time therein what has been done under such warrant, and if the same be not executed within one calendar month from the day of the delivery to him, why it has not been executed. And the high bailiff must, at all reasonable times, give every information to a suitor, his solicitor, or agent, as to the execution or non-execution of a warrant issued at his instance (*m*).

The warrant must bear the time at which it was applied for (*n*), and the date upon which it was issued (*o*). The registrar must also endorse upon it the amount to be levied, distinguishing the amount adjudged to be paid, and the fee for the warrant (*p*). The warrant will remain in force for twelve calendar months from the date of issue, and no longer (*q*).

Concurrent warrants may be issued into different districts for execution under the powers noticed hereafter (*r*); but the costs of one warrant only will be allowed against the debtor, unless by order of the judge (*s*).

*Effect of the warrant.* At common law the goods of the execution-debtor were bound from the *teste* of the writ, and no dealing with them by the debtor could take away the sheriff's right to seize them if he could find them within his bailiwick. The Statute of Frauds (*t*) altered this by providing that "no writ of *fiери facias* or other writ of execution" should bind the goods until the delivery of the writ to the "sheriff, under-sheriff, or coroners;" but as against the debtor himself, the goods, notwithstanding the statute, were still bound from the *teste* of the writ. "The difference is only important where the debtor dies before the writ is delivered to the sheriff, in which case the sheriff can seize in the hands of his executors all goods which belonged to him at the *teste* of the writ; but, as against all third parties, the sheriff can only seize what belonged to the debtor when the writ was delivered to him. Still the sheriff had no property in the goods till seized" (*u*). The law was again altered by the Mercantile Law Amendment Act, 1856, section 1 of which provides that "no writ of *fiери facias* or other writ of execution, and no writ

(*m*) Order ii., rule 29.

(*n*) See *supra*.

(*o*) Order xix., rule 2.

(*p*) 9 & 10 Vict. c. 95, s. 109;  
order xix., rule 4. See forms  
32, 33.

(*q*) Order xix., rule 2.

(*r*) *Post*, p. 228.

(*s*) Order xix., rule 5.

(*t*) 29 Car. 2, c. 3, s. 15  
(Statutes revised).

(*u*) *Per* Mellish, L.J., *Ex parte*  
*Williams, In re Davies*, L. R. 7  
Ch. 314, 317.

of attachment against the goods of a debtor, shall prejudice the title to such goods, acquired by any person *bona fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ; provided such person had not, at the time when he acquired such title, notice that such writ, or any other writ by virtue of which the goods of such owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff, or coroner" (v). Two points arise on the construction of these Acts: 1. Does the Statute of Frauds apply to county courts? 2. Does the Mercantile Law Amendment Act? On the first point it is conceived that there is no doubt that it does extend to county courts, and that the reasoning already applied to Acts passed before the County Courts' Acts, in regard to jurisdiction, may also be applied to it (w). That it is so is confirmed by the legislation in regard to county courts, which places the time of the application to the registrar for the warrant as the period corresponding to the delivery of the writ to the sheriff under process from the superior court (x). The second point is not so clear, and the opinion of Mr. Day (y) appears to incline against it. That opinion, however, appears to have been influenced by the fact that the section is not referred to in the case of *Ex parte Williams*. With the greatest respect, however, for the high authority of the learned author just mentioned, it is conceived that the section does apply to county courts, although the words used in the latter part of the section appear to be applicable to the superior courts only, and for these reasons: 1. The 19 & 20 Vict. c. 108, above referred to, was passed after the 19 & 20 Vict. c. 97, and must be taken to have been passed in reference to the law as it then existed. 2. The words in the 9 & 10 Vict. c. 95, s. 94, authorising the warrant, are that the registrar "shall issue, under the seal of the court, a writ of *fiery facias* as a warrant of execution;" and similar words are used both in the Statute of Frauds and the Mercantile Law Amendment Act. 3. The Legislature intended to place high bailiffs, in regard to executions, upon the same footing as sheriffs, as is shown by

(v) 19 & 20 Vict. c. 97, s. 1. As to the construction of this section, see *Gladstone v. Padwick*, L. R. 6 Ex. 203; *Hobson v. Thelluson*, L. R. 2 Q. B. 642; 36 L. J. Q. B. 302; 15 W. R. 1037.

(w) *Ante*, pp. 9, 10.

(x) 19 & 20 Vict. c. 108, ss. 46, 47, and see *per Mellish, L.J., Ex parte Williams, supra*; and 9 & 10 Vict. c. 95, s. 94.

(y) Day's Common Law Procedure Acts, 4th edit., p. 391.

the 9 & 10 Vict. c. 95, s. 33. 4. It was unnecessary to consider the Mercantile Law Amendment Act in the decision in *Ex parte Williams*; and, moreover, it does not appear to have been cited by counsel on either side. However the point may be decided, it is nevertheless expressly decided that an execution-creditor in a county court has no "security" within the meaning of the Bankruptcy Act, 1869 (z), until actual seizure, and that his title will not prevail against that of the trustee if the seizure be made after an act of bankruptcy (a).

The high bailiff is empowered by the warrant to levy the sum of money ordered to be paid and the costs of the execution by distress and sale of the goods and chattels of the defaulting party, wherever they may be found within the district of the court, and all constables and other peace officers within their several jurisdictions must aid in the execution of the warrant (b). The warrant may be executed within five hundred yards of the boundary of the district of the court from which it issued by a bailiff of such court, or by order of the judge, by the same bailiff within the district of any other court (c).

On levying, the bailiff must deliver to the debtor, or leave at the place where the levy is made, a notice (d), prepared by and delivered to the bailiff by the registrar, informing the debtor of the amount for which the levy is to be made, and that the goods will not be sold for five days, unless they are of a perishable nature, or he wishes it (e).

*What goods may be seized.* The bailiff may seize under any process of execution any of the goods and chattels of the debtor, except the wearing-apparel and bedding of such debtor or his family, and the tools and implements of his trade to the value of 5*l.*, which are to that extent exempt from seizure. He may also seize and take any money or bank-notes of any bank, and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money, belonging to any such debtor (f). The high bailiff must hold any cheques, and such other securities as are last mentioned, as a security for the amount to be levied, or for so much as shall not have been levied or raised for the benefit of the plaintiff; and the plaintiff may in the name of the defendant, or of any other person in whose name the

(z) 32 & 33 Vict. c. 71, s. 12.

(a) *Ex parte Williams*, *supra*.

(b) 9 & 10 Vict. c. 95, s. 94.

(c) 19 & 20 Vict. c. 108, s. 17.

(d) Form 22.

(e) Order xix., rule 4.

(f) 9 & 10 Vict. c. 95, s. 96.

defendant might have sued, sue for the recovery of the sums secured by any such security, when the time for payment arrives (*g*).

The bailiff may not break open outer doors (*h*), but being once inside he may break open inner doors (*i*). He may only seize such goods as belong to the debtor, and not other goods in his custody belonging to other persons (*j*). Fixtures affixed to the freehold may not be seized unless they are trade fixtures (*k*).

*Imperial taxes* for one year's arrears must be paid before sale or removal of any goods (*l*).

*Payment of debt and costs.* If, before actual sale, the debtor pays or tenders the amount of the debt and costs, or such less sum as the creditor may agree to accept, and fees, to the registrar or bailiff holding the warrant, the execution must be superseded, and the goods seized released (*m*).

*Sale of the goods taken.* The sale may not take place until after the end of five days at least from the day on which the goods were seized, unless they are of a perishable nature, or the debtor requests it, in writing. Until sale the bailiff must deposit them for safe custody in some fit place, or with some fit person approved by the high bailiff. The high bailiff may appoint persons to keep possession, and sworn brokers and appraisers for the purpose of selling or valuing the goods; and he may direct security to be taken from each of them. Either the high bailiff or the judge may dismiss any person so appointed. No sale may be made except by the brokers or appraisers so appointed. The broker or appraiser is entitled to have out of the produce of the goods distrained or sold, sixpence in the pound on the value of the goods for the appraisement, besides the stamp duty, and one shilling in the pound on the net produce of the sale for advertisements, catalogues, sale, commission, and delivery of the goods (*n*). No possession fee is payable if the amount levied is paid immediately; but if the officer has to remain in possession more than half an hour, possession fee for the day may be charged (*o*). No appraisement may take place until the

(*g*) 9 & 10 Vict. c. 95, s. 97.

(*h*) *Semayne's Case*, 1 Sm. L. C. 85.

(*i*) *Lee v. Gansell*, 1 Cowp. 1.

(*j*) *Dawson v. Wood*, 3 Taunt. 260.

(*k*) See notes to *Simpson v.*

*Hartopp*, 1 Sm. L. C. 379; and to *Horn v. Baker*, 2 Sm. L. C. 195.

(*l*) 43 Geo. 3, c. 99, s. 37.

(*m*) 9 & 10 Vict. c. 95, s. 109.

(*n*) *Ibid.*, s. 106.

(*o*) Order xxxvi., rule 7.

fifth day of the bailiff's having possession, unless the goods are of a perishable nature, or are sold at the request of the debtor, within four days, or are removed (*p*).

The judge may, in writing, authorise any bailiffs appointed by the high bailiff to act as brokers or appraisers for the purpose of selling or valuing, and bailiffs so appointed may perform all the duties, and will be entitled to the same poundage, as sworn brokers or appraisers (*q*).

*Costs.* Costs of warrants against the goods, whether executed, unexecuted, or unproductive, will be allowed against the defendant, unless the judge otherwise orders (*r*).

*Execution out of jurisdiction.* When a warrant has issued, or an order of commitment has been made, and the debtor or his goods and chattels are out of the jurisdiction of the court, the high bailiff may send the warrant or order to the registrar of any county court within the jurisdiction of which such debtor or his goods and chattels may be or be believed to be, together with a warrant under the hand of the high bailiff and the seal of the court requiring execution of the same. The registrar of the foreign court will then seal the warrant or order with the seal of his court, enter it in a book (*s*), and reissue it to his high bailiff, who must then act in all respects in the execution of the warrant or order within the jurisdiction of his court as if it were a warrant or order of his own court. The high bailiff of the foreign court must make a return as to what has been done in the execution of the process to the high bailiff of the home court (*t*).

If money is received under the warrant by the bailiff of the foreign court, he must, within twenty-four hours, pay over the same to the registrar of the foreign court, and unless an interpleader summons as to such money be pending, he must make a return in writing of the amount received. In case of a levy, the bailiff must state in the return the gross amount produced by it, the particulars of the appraiser's and broker's charges and the fees allowed for keeping possession; and he must pay to the registrar of the foreign court the amount levied, less such charges and fees. The registrar of the foreign court must certify in the return the amount paid into court and the correctness of the charges, and must account for and pay over the amount

(*p*) Order xxxvi., rule 8.

(*q*) 12 & 13 Vict. c. 101, s. 10.

(*r*) Order xxxvi., rule 6.

(*s*) Order xxvi., rule 1.

(*t*) 9 & 10 Vict. c. 95, s. 104;  
15 & 16 Vict. c. 54, s. 5.

paid into court to the treasurer of the foreign court, at such time as the treasurer may require. The high bailiff must then transmit the return, as mentioned at the end of the last paragraph, to the high bailiff of the home court, who must, within twenty-four hours from the receipt of it, deliver it to the registrar of the home court. The registrar of the home court must then pay the plaintiff the amount certified as the proceeds of the execution out of any money in his hands, and must enter in a book the amount so certified, and file the return; and the registrar must be allowed by the treasurer, at his audit, the amount so paid (*u*).

If the warrant has not been executed within one calendar month from the day of its delivery, the high bailiff of the foreign court must, on the day after the end of such month, make a return to the registrar of the home court within twenty-four hours, and endorse on the warrant the reason why it could not be executed, and sign the same. He must also return the warrant, executed or not, to the home court at any time, if so directed by the registrar of the home court, and he must give all such information as may be required by him in regard to the warrant (*v*).

*Rent in arrear.* The 8 Anne, c. 14, s. 1, does not apply to goods taken in execution under the warrant of a county court, but the landlord of any tenement in which goods are so taken may claim the rent any time within five clear days from the date of the taking, or before the removal of the goods. He must deliver to the bailiff or officer making the levy a writing signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the time in respect of which it is due. If such claim be made, the bailiff or officer must, in addition to the levy, distrain for the rent claimed and the costs of distress, and he must not, within five days after distress, sell any part of the goods taken, unless of a perishable nature, or unless at the request in writing of the party whose goods have been taken. The bailiff must afterwards sell goods under the execution and distress to satisfy—first, the costs of sale; secondly, the claim of the landlord, not exceeding the rent of four weeks, when the tenement is let by the week, the rent of two terms of payment when let for any term less than a year, or the rent of one year in any other case; and thirdly, the amount for which the warrant issued. If any replevin be made of the goods so taken, the bailiff must, nevertheless, sell such

(*u*) Order xxvi., rule 2.

(*v*) Order ii., rule 31.



portion as will satisfy the costs of sale under the execution, and the amount for which the warrant issued. In either event the overplus of the sale, if any, and the residue of the goods, must be returned to the defendant. The poundage of the high bailiff and broker for keeping possession, appraisalment, and sale under such distress, will be the same as if the distress had been an execution of the county court, and no other fees may be demanded or taken in respect thereof (*w*).

The above provisions in favour of the landlord differ from an ordinary distress, and only the goods belonging to the debtor himself may be taken. Where goods of a stranger had been taken, he was held entitled to have them returned to him (*x*).

*Proceeds of execution.* Every bailiff levying or receiving any money by virtue of any process of the court of which he is bailiff, must, within twenty-four hours from its receipt, pay over the same to the registrar of his court, who must endorse upon the warrant a memorandum of having received it, and the high bailiff must file the process and retain it in his custody (*y*).

Where the goods of any trader have been taken in execution and sold under the direction of a county court, in respect of a judgment for a sum exceeding 50*l.*, the high bailiff or other officer must retain the proceeds of the sale for fourteen days, and upon notice being served upon him within that period of a bankruptcy petition (*z*) having been presented against such trader, must hold the proceeds of the sale, after deducting expenses, on trust to pay the same to the trustee. If no notice of a petition is served within fourteen days, or if, after such notice, the trader is not adjudged a bankrupt on the petition, or on any other petition of which the high bailiff or other officer has notice, he may deal with the proceeds of the sale in the same manner as he would have done had no notice of the presen-

(*w*) 19 & 20 Vict. c. 108, s. 75.

(*x*) *Beard v. Knight*, 8 E. & B. 865; 27 L. J. Q. B. 359; *Wilcoxon v. Searby*, *Re Foulgar v. Taylor*, 5 H. & N. 202; 29 L. J. Ex. 154.

(*y*) Order ii., rule 30.

(*z*) These words include liquidations by arrangement: *Ex parte King*, L. R. 10 Eq. 432. As to the construction and application of the section generally, see *In re*

*Johnson*, L. R. 7 Ch. 320; 41 L. J. Bk. 26; *Ex parte Villars*, *In re Rogers*, L. R. 9 Ch. 433; 43 L. J. Bk. 76; *Ex parte Lovering*, *In re Peacock*, L. R. 17 Eq. 452; 43 L. J. Bk. 58; *Ex parte Brooke*, *Re Hassall*, L. R. 9 Ch. 301; 43 L. J. Bk. 49; *Stock v. Holland*, L. R. 9 Ex. 147; 43 L. J. Ex. 112; *Revell v. Blake*, L. R. 8 C. P. 533; 42 L. J. C. P. 165.



tation of the petition been served on him (a). As the bailiff is directed to pay over the money received by him within twenty-four hours under the provisions already mentioned, it would appear that the *registrar* must retain the money in court until the expiration of the fourteen days.

Money is obtained out of court on production of the plaint-note in the manner already described (p. 189).

*Enforcing the judgment in the high court.* If the judgment is for a sum exceeding 20*l.*, without costs, and there are no goods or chattels which can be conveniently taken to satisfy the judgment, a judge of the high court may, on terms, order a writ of *certiorari* to issue to remove the judgment into the high court; and when removed it will have the same force and effect as a judgment of the high court, but no action may be brought upon it (b). It is only under these circumstances that the judgment can be removed into the high court (c). When so removed, land may be extended to satisfy the judgment. The judgment of a county court will be aided against the equitable estate of the debtor (d).

*Aiding the judgments of other courts.* By certain statutes relating to the stannaries courts and local courts of record, power is given to the officers of those courts, under certain conditions, to send process for execution to a county court. These provisions may, perhaps, most conveniently be noticed here.

*Judgments of stannaries courts.* Where judgments have been recovered in the stannaries courts not exceeding 25*l.*, which cannot conveniently or effectually be enforced in such courts, the party entitled may send a writ of execution to the registrar of any county court within the district of which the judgment-debtor or his goods and chattels shall be or be believed to be, with a warrant annexed under the hand and seal of the court of the vice-warden requiring execution, and it must be executed according to the practice of the county courts (e).

*The Borough and Local Courts of Record Act, 1872.* Where final judgment has been obtained in an action brought in a borough or local court of record for not more than 20*l.*,

(a) 32 & 33 Vict. c. 71, s. 87.

(c) *Moreton v. Holt*, 10 Ex.

(b) 19 & 20 Vict. c. 108, s. 49.

707; 24 L. J. Ex. 169.

See *Austin v. Mills*, 9 Ex. 288;

(d) *Bennett v. Powell*, 3 Drew.

23 L. J. Ex. 40.

326; 24 L. J. Ch. 736.

(e) 18 Vict. c. 32, ss. 9, 10; 32 & 33 Vict. c. 19, s. 29.

exclusive of costs; or where a rule or order of the judge has been made for payment of money, or costs, charges or expenses, not exceeding 20*l.*, the court may send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels. The registrar must stamp or seal the writ or precept, and thereupon it must be executed by the high bailiff as if it had been issued out of the county court. The high bailiff must take all the usual and proper fees thereupon, and make a return of what he has done thereunder to the bailiff or serjeant-at-mace of the court. In all matters done under such writ of precept or in relation thereto, the high bailiff will be under the direction and control of the judge of the county court of which he is high bailiff, as if the writ or precept had issued out of the county court. The costs of more than one writ, precept, or warrant will not be allowed against the execution-debtor unless by order of the judge (*f*) of the "said court" (*g*).

INTERPLEADER. The proceedings by interpleader are devised for the purpose of giving relief against adverse claims, to persons, such as bailiffs, sheriffs, and others, who have no interest in the subject-matter of such claims. The provisions applicable to the cases where a defendant is sued by the assignee of a debt or *chase in action* will be found *post*, p. 236.

If any such claim be made by a third party in respect of any goods, or the proceeds or value thereof, taken in execution under the process of a county court, the registrar, on the application of the high bailiff, before or after action brought against him by such party, may issue a summons calling before the court the execution-creditor and the adverse claimant. The judge must then decide which of the two is entitled to the goods. He must also decide on the damages (if any) to be allowed in respect of the execution to or against the creditor and claimant or the high bailiff, and also upon the costs (*h*). These orders are enforced like other orders. They are final unless appealed from. Any action commenced in any court by the adverse claimant in respect of his claim, or for damages arising out

(*f*) The judge of the borough or other local court is probably intended, and not the judge of the county court, *sed qu.*

(*g*) 35 & 36 Vict. c. 86, s. 6.

(*h*) See orders, forms 114—119, 121—125.

of the execution, will be stayed on the issue of the summons (*i*).

The provisions above mentioned are substituted for provisions in the original Act, under which it had been held from time to time that the order of the judge, in favour of the claimant, did not preclude him from bringing his action for the trespass if no decision upon the question of damages had been given (*j*). The present provisions are doubtless intended to put an end at once and for ever to all claims between the parties arising out of the execution; and so it has been held that the order on the summons bars all future claims, whether damages were claimed and adjudicated upon before the judge or not (*k*).

*Summons.* Interpleader summonses must be issued by the registrar without leave of the court (*l*); and they must be issued in the district in which the levy was made, and the parties summoned to that court (*m*).

The summonses must be served in the same manner as ordinary summonses; and the case will proceed as in ordinary cases, and as if the claimant were plaintiff and the execution-creditor defendant; but where the claimant has not, at the request of the bailiff, made deposit under 19 & 20 Vict. c. 108, s. 72 (*infra*), the time of service may, if the high bailiff so desires, by leave of the judge or registrar, be such time as will obtain a speedy decision of such claim (*n*).

The bailiff is not required by the mere fact of the issue of the summons to withdraw from possession (*o*).

*Deposit by claimant.* The claimant may deposit with the bailiff either the value of the goods claimed (such value to be fixed by appraisement in case of dispute) or the sum which the bailiff is allowed to charge as costs for keeping possession until the decision of the claim. In default of his taking one or the other of these courses, the bailiff must sell the goods as if there had been no claim, and pay the proceeds into court to abide the decision of the judge.

(*i*) 30 & 31 Vict. c. 142, s. 31.

(*j*) *Foster v. Pritchard*, 2 H. & N. 151; 26 L. J. Ex. 215; *Mercer v. Stanbury*, 2 H. & N. 155; 25 L. J. Ex. 246; *Chater v. Chignall*, 15 Q. B. 217; 19 L. J. Q. B. 520; *Jessop v. Crawley*, 15 Q. B. 212; 19 L. J. Q. B. 319.

(*k*) *Death v. Harrison*, L. R. 6 Ex. 15; 40 L. J. Ex. 26; 23 L. T.

N. S. 495. See the plea in this case, setting up the adjudication under the interpleader proceedings.

(*l*) Order xxi., rule 6.

(*m*) *Ibid.*, rule 7.

(*n*) *Ibid.*, rule 1. For forms of summonses, see forms 109—113; as to service, see *ante*, p. 119.

(*o*) *Ex parte Summers*, *In re McKillar*, 18 Jur. 522.

Where a deposit of the value is made, the bailiff must pay the amount into court to abide the decision (*p*).

*Statement of claim.* The claimant must, five clear days before the return-day, deliver to the bailiff or leave at the office of the registrar a statement of particulars of the goods claimed and the grounds of his claim; or, in case of a claim for rent, of the amount, and for what period, and for what premises. The claimant's name, address, and description must also be set fully forth (*q*).

A notice stating merely that the goods taken are the property of the claimant, and not of the execution-creditor, is insufficient (*r*); but a notice stating that "the goods were assigned to us by an indenture dated, &c., and made between the defendant and ourselves," has been held sufficient without their being specified in a schedule (*s*). The Court of Exchequer was equally divided as to whether particulars describing the goods, &c., seized, as "the goods and money seized by virtue of the warrant," were sufficient or not (*t*). Where the address of the claimant was stated as "Elizabeth Street," instead of "Terrace, Islington," it was held that, not being calculated to mislead, it was sufficient (*u*).

If the particulars are insufficient, or are not delivered within the prescribed time, the proper course is for the judge to amend the particulars or to order a new summons to issue, so that he may determine the case on the merits (*v*). Still the insufficiency justifies the judge in refusing to hear it in its then form (*w*); but if the particulars ought to have been held sufficient the judge may, if he has refused to hear the claim, be ordered to hear it (*x*), or a prohibition may be obtained to prevent a sale (*y*). By consent of all parties, or without consent, if the judge so directs, a claim may be tried, although the rule as to the issue of the

(*p*) 19 & 20 Vict. c. 108, s. 72.

(*q*) Order xxi., rule 2. For forms of particulars, see forms 7, 8, Appendix F.

(*r*) *Reg. v. Chilton*, 15 Q. B. 220; S. C., *Ex parte Tanner*, *Cullum v. Ross*, 19 L. J. Q. B. 318.

(*s*) *Reg. v. Richards*, 2 L. M. & P. 263; 20 L. J. Q. B. 351; and see *Churchward v. Coleman*, *infra*.

(*t*) *Richardson v. Wright*, W. N. 1875, 162.

(*u*) *Hardy v. Walker*, *Ex parte M'Fee*, 9 Ex. 261; 23 L. J. Ex. 57.

(*v*) *Beswick v. Boffey*, 9 Ex. 315; 23 L. J. Ex. 89; *Reg. v. Stapleton*, 2 L. M. & P. 603; 21 L. J. Q. B. 8; *Fraser v. Fothergill*, 14 C. B. 298; 23 L. J. C. P. 53.

(*w*) *Reg. v. Chilton*, *supra*.

(*x*) *Churchward v. Coleman*, L. R. 2 Q. B. 18; 36 L. J. Q. B. 57. See *ante*, p. 85.

(*y*) *Hardy v. Walker*, *Ex parte M'Fee*, *supra*. See *ante*, p. 72.

summons and the delivery of particulars has not been complied with (z).

After such notice as aforesaid, money which has been paid into court under the execution must be retained until after adjudication on the claim (a). If damages are claimed from the execution-creditor or the high bailiff, for or in respect of the seizure of the goods, the claimant must, in his particulars, state the amount claimed for damages and the grounds of his claim (b). Notice, stating the grounds for, and the amount of the claim, must be delivered five days before the return-day to the high bailiff, if damages are claimed against him by the execution-creditor (c).

Where a claim for damages is made against the high bailiff and the execution-creditor, or either of them, they or either of them may pay money into court in satisfaction of any such claim for damages. The payment must be made in the same manner, and will have the same effect, as if the proceeding had been an ordinary action in which the claimant was plaintiff and the high bailiff and judgment-creditor defendants (d).

*Bailiff's costs.* If the claim is decided against the claimant, the costs of the bailiff allowed by the judge must be retained by him out of the amount levied, if the judge does not otherwise order, without prejudice to the right of the execution-creditor to recover them from the claimant (e). If the bailiff neglects to retain his costs, he cannot, after paying over the proceeds, recover them from the execution-creditor (f).

*Jury.* At the instance of either party the case may be tried by a jury (g).

*Appeal.* An appeal lies to the appeal court when the money or the value of the goods claimed, or of the proceeds, exceeds 20*l.*, and in all cases where the parties agree that the court shall have jurisdiction (h) and in other cases, by leave of the judge (i).

(z) Order xxi., rule 2.

(a) *Ibid.*, rule 2.

(b) *Ibid.*, rule 3.

(c) *Ibid.*, rule 4, form 120. For orders, see forms 121, 122, 125, and warrant of execution, form 126.

(d) *Ibid.*, rule 5, *ante*, p. 144.

(e) *Ibid.*, rule 8.

(f) *Bloor v. Hunston*, 15 C. B. 266; 24 L. J. C. P. 26.

(g) Order xvi., rule 3.

(h) 19 & 20 Vict. c. 108, s. 68. Before this section there was no appeal: *Fraser v. Fothergill*, *Beswick v. Boffey*, *supra*.

(i) 30 & 31 Vic. c. 142, s. 13. See as to appeals, ch. vi., *ante*, p. 198.

The appeal lies of right (*i.e.*, without leave of the judge) where the value of the goods seized exceeds 20*l.*, although the claim in the original plaint is below 20*l.*, and the claimant to prevent the goods from being sold has paid it, and although the question in dispute does not appear to be one of pure law (*j*). Where a landlord appears at the hearing of an interpleader summons, he, as well as the execution-creditor and the claimant, has a power to appeal, if his rights are in any way prejudiced (*k*).

On reversing the judgment, with costs, of a county court, and ordering a new trial, it was held by the Court of Common Pleas that the order for payment of costs was thereby also reversed (*l*).

If proceedings are taken by rule to compel the judge to hear a claim, the result, so far as the costs in the county court are concerned, seems doubtful, the Court of Exchequer having decided that they can deal with the costs (*m*), the Court of Queen's Bench that they cannot (*n*).

*Assignor disputing assignment.* Where the defendant in an action brought by the assignee of a debt or *chose in action* (*o*) has had notice that the assignment is disputed by the assignor, or any one claiming under him, or has had notice of any other opposing or conflicting claims to such debt or *chose in action*, he may within five days of the service of the summons apply to the registrar for a summons against the assignor or the person making such conflicting claim, and the registrar must thereupon issue an interpleader summons (*p*), returnable as soon as conveniently may be, and on the return-day the court must hear the case of the defendant and of the plaintiff in the action, and also of the assignor disputing the assignment, or of the person making the opposing or conflicting claim, and must give such judgment as will finally determine the rights and claims of all parties, as if the same had been an ordinary action into which a third party had been introduced by counter claim (*q*).

(*j*) *Vallance v. Naish*, 2 H. & N. 712; 27 L. J. Ex. 142.

(*k*) *Wilcoxon v. Searby, Re Foulgar v. Taylor*, 5 H. & N. 202; 29 L. J. Ex. 154.

(*l*) *Gage v. Collins*, L. R. 2 C. P. 381; 36 L. J. C. P. 144; 15 W. R. 568.

(*m*) *Whitehead v. Procter*, 3 H. & N. 532.

(*n*) *Churchward v. Coleman*, L. R. 2 Q. B. 18; 36 L. J. Q. B. 57.

(*o*) See *ante*, p. 90.

(*p*) Form 85.

(*q*) Order xxi., rule 9. For forms of orders on the trial, see forms 87—89.

*Payment into court.* Where the defendant, under such circumstances as above, wishes to pay the debt and costs into court to abide its decision, he must on such payment into court give to the registrar the name of the person against whose dispute of the assignment or conflicting claim he desires to be protected, and the registrar must thereupon give notice to such person (*r*), and on the return-day the judge must determine the rights of the parties, and may, if he thinks fit, order the defendant to pay all or any part of the costs (*s*).

## PART II. ATTACHMENT OF DEBTS.

Any creditor who has obtained a judgment against a debtor may obtain an order for the oral examination of the debtor (*t*) as to any and what debts are owing to him, and for the production of any of his books or documents (*u*). If he wishes to have the defendant examined immediately after judgment has been given, he must, before the cause is called on, lodge with the registrar a statement in writing (*v*) of the names, addresses, and descriptions of the persons whom he supposes to be debtors to the defendant, and who *quoad* such debts are within the jurisdiction of the court (*w*). After judgment for the plaintiff, the defendant may then be examined before the court, at the request of the plaintiff, as to any debts due and owing or accruing to the defendant from any persons mentioned in the statement. If such person is then present, he may be required to show forthwith, if he admits the debt, why he should not be ordered to pay into court, for the benefit of the judgment-creditor, such debts or so much thereof as will satisfy the judgment debt; and the court may make order accordingly, and the order must be entered in the minute-book. The order may be enforced in the same manner as any order made in any action in the court, and the garnishee (the person ordered to pay) will not be liable

(*r*) Form 86. This is more correctly termed a summons.

(*s*) Order xxi., rule 10.

(*t*) This section does not apply to a corporation so as to give power to examine directors or officers: *Dickson v. Neath and Brecon Railway Co.*, L. R. 4 Ex. 87; 38 L. J. Ex. 57; 17 W. R. 501.

(*u*) 17 & 18 Vict. c. 125, s. 60. These provisions of the Act of 1854 were extended to county courts by Order in Council dated the 18th of November, 1867.

(*v*) Form 98.

(*w*) Order xxiv., rule 1.



for any costs if he pays as ordered. The payment must be entered in the "cash-book" and "ledger" (*x*).

The examination under the foregoing provisions appears to take place before the judge immediately after the hearing; but no rules are prescribed for the oral examination of the judgment-debtor at any other time. There appears to be no reason, however, why, if the statement has been lodged, but the examination has not taken place immediately after the hearing, an order for examination should not be obtained afterwards, and it seems that any such examination might be made by order of the judge before the registrar in a similar manner to that described at p. 155 (*y*).

If the plaintiff lodges no such statement as above, he may either before or after oral examination, or a defendant who has obtained judgment against a plaintiff may, any time after judgment, on lodging with the registrar of the court an affidavit by himself or his solicitor, stating the fact of the judgment, and of its being unsatisfied, and to what amount, and that a third person (hereafter called the garnishee) is indebted to the judgment-debtor, and is *quoad* the debt within the jurisdiction of the court, and could be sued therein without leave, or by leave under 30 & 31 Vict. c. 142, s. 1, enter a plaint for the amount of the debt due to the judgment-debtor from the garnishee. And when the garnishee is not *quoad* such debt within the jurisdiction, the judgment-creditor on lodging a certificate of the judgment (*z*) and a copy of the affidavit with the registrar of the court in the district of which the garnishee resides or carries on business, may enter a plaint there (*a*).

A summons then issues, calling upon the garnishee to show cause why an order should not be made upon him for the payment of the amount of the judgment, or so much thereof as equals the amount of the debts due and owing and accruing from him to the judgment-creditor (*b*). The summons must be personally served on the garnishee, and when so served it will attach in his hands all debts due, owing, or accruing from him to the judgment-debtor (*c*). If the garnishee pays the money into court five clear days before the return-day, he is not liable for any of the judgment-creditor's costs (*d*). If he does not pay the money into court, and does not dispute the debt, or if he does not

(*x*) Order xxiv., rule 2, form 99.

(*y*) See 17 & 18 Vict. c. 125, s. 60, and 9 & 10 Vict. c. 95, s. 78, *ante*, p. 169.

(*z*) Form 38.

(*a*) 17 & 18 Vict. c. 125, s. 61; order xxiv., rule 3.

(*b*) See *ibid.*, s. 61, form 100.

(*c*) *ibid.*, s. 62; order xxiv., rule 4.

(*d*) Order xxiv., rule 5.

appear on the return-day, the court may order execution to issue for the amount (*e*). On the return-day the court decides as to his liability, and as to the party by whom the costs of the proceedings by plaintiff shall be paid, and makes order accordingly (*f*). Where the court in which the garnishee is sued is not the court in which the judgment upon which he is garnished was given, the registrar of such court must send a certificate (*g*) of the order of his court to the court in which such judgment was given, and of payment made, if any, before or after the return-day (*h*). It appears hardly necessary that any proceedings analogous to those authorised by section 64 should be taken in a county court.

The order for payment may be enforced in the same manner as a judgment for debt or damages (*i*). Payment by or execution (*j*) levied against a garnishee is a valid discharge as against the judgment-debtor, even though set aside or the judgment reversed (*k*). It seems that the garnishee is not protected if he pays the debt to the judgment-creditor before an order upon him has been obtained (*l*).

The judge may, in proceedings under the above-mentioned provisions, refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious (*m*).

If it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the judge may order such third person to appear before him, and state the nature and particulars of his claim upon such debt (*n*); and after hearing his allegations, and those of any person whom by the same or any subsequent order the judge may think fit to call before him, or if such third person does not appear, the judge may order execution to issue to levy the amount due from such garnishee, or the judgment-creditor to proceed against the garnishee according to the provisions already men-

(*e*) 17 & 18 Vict. c. 125, s. 63.

(*f*) *Ibid.*, s. 67; order xxiv., rule 6.

(*g*) Form 38.

(*h*) Order xxiv., rule 7.

(*i*) Order xix., rule 1.

(*j*) Form 102.

(*k*) 17 & 18 Vict. c. 125, s. 65, form 101.

(*l*) *Turner v. Jones*, 26 L. J. Ex. 262; 1 H. & N. 878.

(*m*) 23 & 24 Vict. c. 126, s. 28, which, with ss. 29, 30, and 31, and all powers incident to them, are extended to county courts by Order in Council dated 18th May, 1870.

(*n*) 23 & 24 Vict. c. 126, s. 29.

tioned, and he may bar the claim of such third person, or make such other order as he thinks fit, upon such terms, in all cases, with respect to the lien or charge, if any, of such third person, and to costs, as he thinks fit and reasonable (*o*). The provisions of the Act of 1854 already mentioned, so far as they are applicable, apply to any order made under the last-mentioned sections (29 and 30) of the Act of 1860 (*p*).

*Debts which may be attached.* The following are instances of debts held to be attachable: A debt of unascertained amount; a debt due to one or more of several joint judgment-debtors; a debt due but not payable until a future time; the proceeds of an execution in the hands of the sheriff (*q*); rent due in the hands of a tenant (*r*). It seems that, as a general rule, debts in which the debtor is beneficially interested, and for which he can sue at law, are attachable; but that debts which the debtor cannot sue for are not so.

No order may be made attaching the wages of any servant, labourer, or workman (*s*).

### PART III. IMPRISONMENT OF DEBTOR.

The judges of county courts, notwithstanding recent legislation, retain the power of committing to prison, for any term not exceeding six weeks, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of their own court, or of any other competent court (*t*). They are thus enabled to commit for non-payment under a judgment of the high court or of any county court, whether their own or not, or of any other competent court. The jurisdiction as to judgments of the high court is limited to cases where the amount of the judgment debt does not exceed 50*l.*, exclusive of costs (*u*). No limit exists in regard to the amount of county court judgments, hence the judges

(*o*) 23 & 24 Vict. c. 126, s. 30.  
See *Mitchell v. Lee*, L. R. 2 C. P.  
259; 36 L. J. Q. B. 154; 15 W. R.  
337; 15 L. T. N. S. 502.

(*p*) *Ibid.*, s. 31.

(*q*) See Day's Common Law  
Procedure Acts, notes to sect. 61  
of Act of 1854, and the further  
cases there cited.

(*r*) *Mitchell v. Lee*, *supra*.

(*s*) 33 & 34 Vict. c. 30, s. 1.  
See *Jones v. Thompson*, 27 L. J.  
Q. B. 234; *Dresser v. Jones*, 28  
L. J. C. P. 281.

(*t*) 32 & 33 Vict. c. 62,  
s. 5.

(*u*) *Ibid.*

may commit upon any judgment of a county court for payment of money, whether, as in some cases of jurisdiction given by consent of the parties (*v*), the judgment debt exceeds 50*l.* or not.

The county court judges may also, in proceedings in pursuance of the provisions now under notice, direct that any debt due from any person under an order or judgment of any competent court shall be paid by instalments; and they may from time to time rescind or vary their order (*w*). After obtaining in a county court an order for payment by instalments upon a judgment of the high court, it is conceived that the creditor would be prevented from pursuing his ordinary remedies in the high court (*x*), and that he could only obtain the assistance of the high court in the manner already described (*y*). If, after an order to pay by instalments, the creditors of the judgment-debtor accept a composition under section 126 of the Bankruptcy Act, 1869, binding upon the judgment-creditor, his remedy on the order is suspended; on the debtor's failing to pay the composition, however, the creditor is remitted to his original position, and may obtain a commitment for non-payment of an instalment due under the original order (*z*).

The power of commitment can only be exercised where it is proved to the satisfaction of the court that the judgment-debtor has or has had since the date of the order or judgment the means to pay the amount required of him, and has refused or neglected, or refuses or neglects, to pay the same (*a*).

A commitment is in the nature of a qualified execution, and not of a punishment for contempt, and one of the Queen's priests in ordinary is privileged from arrest, and his proper mode of obtaining his discharge is by *habeas corpus* from the high court (*b*). A married woman is subject to the Debtors Act, and may be committed on a judgment obtained against her like other persons (*c*).

(*v*) *Ante*, p. 17.

(*w*) 32 & 33 Vict. c. 62, s. 5.

(*x*) See *Jones v. Jenner*, 25 L. J. Ex. 319.

(*y*) *Ante*, p. 231.

(*z*) *Newell v. Van Praagh*, L. R. 9 C. P. 96; 43 L. J. C. P. 94; 29 L. T. N. S. 891; 22 W. R. 377; and see *Edwards v. Coombe*, L. R. 7 C. P. 519; 41 L. J. C. P. 202; 21 W. R. 107; 27 L. T. N. S. 315.

(*a*) 32 & 33 Vict. c. 62, s. 5.

(*b*) *Ex parte Dakins*, 24 L. J. C. P. 131; 16 C. B. 77; and see *Ex parte Kinning*, 16 L. J. Q. B. 257. These cases were decided under ss. 98 and 99 of the 9 & 10 Vict. c. 95, for which sect. 5 of the Debtors Act is to be considered substitutionary; and the words of the repealed sections were much stronger than the present.

(*c*) *Dillon v. Cunningham*, L. R. 8 Ex. 23; 42 L. J. Ex. 11; 27 L. T. N. S. 830.

*Judgment summons.* No order of commitment may be made unless a summons (called a judgment summons) to appear and be examined on oath has been personally served upon the debtor (*d*). No leave is required except in the cases specially mentioned (*e*). Where the judgment is more than six years old, unless some payment has been made by the judgment-debtor into court within twelve months previously, leave will be required. But no notice to the debtor, previous to applying for such leave, will be necessary, and such leave must be expressed on the summons under seal of the court (*f*). If the debtor does not dwell or carry on business, or if he is not employed within the district of the court in which it is proposed to issue the summons, leave must be obtained from the judge before it may issue, and a minute thereof must be entered after hearing in open court the grounds on which leave is asked. For the purpose of the issuing of judgment summonses, the metropolitan courts (*g*) are considered to be one district, so far as relates to summonses by the court in which the action was brought (*h*); no leave is therefore required in the cases to which the rule applies.

If the summons is applied for in a different county court from that in which the order or judgment was obtained, the applicant must obtain from the registrar of the latter court a certified copy of the order or judgment (*i*) and file it with his application (*j*). The registrar issuing the certified copy must make a minute thereof, and no execution or summons on the order or judgment may then issue from such court, unless it be shown that no order has been made in any other court (*k*).

If the summons is applied for on a judgment, decree, or order of any other competent court, the applicant must obtain an office copy of the judgment, and file it, together with an affidavit (*l*) of the sum due upon it, with the registrar, in the district where the debtor resides or carries on business. The registrar will then issue the summons (*m*).

The summons must be issued not less than ten, and served personally not less than five clear days before the

(*d*) Order xix., rule 6, forms 39, 235.

(*e*) *Ibid.*, rule 12.

(*f*) *Ibid.*, rule 32.

(*g*) See *ante*, p. 50.

(*h*) Order xix., rule 7; 19 & 20 Vict. c. 108, s. 48.

(*i*) Form 38.

(*j*) Order xix., rule 8; order xviii., rule 4.

(*k*) *Ibid.*, rule 18.

(*l*) Form 236.

(*m*) Order xix., rule 9, form 235.

debtor is required to appear (*n*); except where the debtor is about to remove from his dwelling or place of business, or is keeping out of the way to avoid service (of which evidence on oath must be given at the hearing), then it may be issued and served any time before the hearing (*o*). Where the summons has not been served within due time by a bailiff, a successive summons may be issued without fee, and may be served by any person whom the judge or registrar may direct; but if such successive summons is not served in due time, no further successive summons will be allowed, but a fresh summons may be issued on payment of the fee (*p*). On the issue of the summons by the court in which the order or judgment was obtained, the bailiff must return into court any warrant of execution which may have issued in the action (*q*).

The practice which has been already explained as to service of the summons applies to judgment summonses when not inconsistent with the above provisions.

*Hearing.* The hearing must be before a judge or his deputy, and the order of commitment must be made in open court, and must show on its face the ground on which it is issued (*r*). If the debtor does not appear, the order may be made in his absence (*s*). If the debtor appears but the creditor does not, the judge may award costs to the debtor (*t*). The hearing may be adjourned from time to time (*u*).

Proof of the means of the debtor may be given in such manner as the court thinks fit, and witnesses may be summoned for the purposes of such proof (*r*). They may be summoned in the same manner as other witnesses, and the expenses of any person examined by the court, whether summoned or not, may be allowed (*v*).

As has been already explained, the court may direct the amount due from the judgment-debtor to be paid by instalments. It is apparently intended that the judge may exercise a discretion, and either commit at once or give

(*n*) Order xix., rule 10.

(*o*) *Ibid.*, rule 11.

(*p*) *Ibid.*, rule 13.

(*q*) *Ibid.*, rule 16.

(*r*) 32 & 33 Vict. c. 62, s. 5.

(*s*) *Davis v. Fletcher*, 2 E. & B.  
7c/277; 22 L. J. Q. B. 429.

(*t*) Order xix., rule 26.

(*u*) *Ibid.*, rule 14.

(*v*) *Ibid.*, rule 15. In *Dunn v.*

*Rigby*, 15 S. J. 492, Pitt Taylor, C.C.J., held that the refusal of a married woman to produce her marriage settlement was sufficient proof of means. The same judge, in *Key v. Coltson*, 15 S. J. 617, held that proof of defendant's wife having a reversionary interest which might be realised was insufficient proof.



the debtor another opportunity by directing payment by instalments. It is conceived, however, that an order for payment by instalments, or that otherwise the debtor be committed, would be bad, and that there is no power to make an order in the alternative. The proper order would, it is conceived, be one for payment by instalments simply, and then on default being made in payment, a committal might be applied for (*w*). To obtain an order to pay by instalments, no proof of means is necessary (*x*).

If the summons is heard in a different court from that in which the order or judgment was obtained, and an order is made altering the terms of the order or judgment, all payments under the new order must be made into, and all executions or other process issued by, the court which has altered the order (*y*).

*Order of commitment.* On the order for commitment being made in open court, as already mentioned, the registrar prepares and issues, under seal of the court, to one of the bailiffs, a warrant of commitment (*z*). The warrant, whenever issued, must bear the date on which the order was made by the court (*a*). No order for commitment must be drawn up or served (*b*).

The warrant empowers the bailiff to arrest the person against whom it is made (*c*), and the same rules as to the mode and place of execution of the warrant apply as in case of execution against the goods (*d*). All constables and other peace officers within their several jurisdictions must aid in the execution of the order or warrant. The gaoler or keeper of the gaol mentioned in the order must receive and keep the debtor until discharged in due course of law (*e*). The extreme term of imprisonment is six weeks,

(*w*) See "Times," June 16, 1870, where Willes, J., at chambers, is reported to have held that he could not make the order in the alternative; and *Hewitson v. Sherwin*, L. R. 10 Eq. 53; 18 W. R. 802. Also under the old law: *Ex parte Kinning*, *supra*; *Abley v. Dale* (1), 10 C. B. 62; 20 L. J. C. P. 33; *Dews v. Ryley*, 11 C. B. 434; 20 L. J. C. P. 264.

(*x*) *Dillon v. Cunningham*, *ante*, p. 241.

(*y*) Order xix., rule 17, form 40.

(*z*) 9 & 10 Vict. c. 95, s. 102, forms 41, 237.

(*a*) Order xix., rule 22.

(*b*) In the rules, the warrant is called always order, and no distinction is made between the order of the court and the warrant issued in pursuance of it. The order mentioned in the text is the order as distinguished from the warrant.

(*c*) 9 & 10 Vict. c. 95, s. 102.

(*d*) *Ante*, p. 223.

(*e*) 9 & 10 Vict. c. 95, s. 102.

As to what gaol, see 9 & 10 Vict. c. 95, s. 49; 12 & 13 Vict. c. 101, ss. 1, 3, 5; 19 & 20 Vict. c. 108, s. 74.



as has already been stated (*f*), the term being computed from the date of the lodging in gaol (*g*).

The order of commitment continues in force for one year from the date on which it was made by the court, and no longer (*h*); but if executed within the year, the debtor may be imprisoned for the full period, although it may expire at a time beyond a year from the date of the order (*i*). So long as the order of commitment remains in force, there is no power to make a fresh order of commitment. Where a debtor was arrested, and after imprisonment for seven days, was discharged, on the ground of privilege, the court restrained by prohibition proceedings on a new judgment summons obtained by the creditor (*j*).

Under the 9 & 10 Vict. c. 95, s. 103, a debtor might be imprisoned over and over again if, having means to pay, he still persisted in not paying (*k*); but in the case of *Horsnail v. Bruce* above cited, the Court of Common Pleas expressed a strong opinion that the section, although not then expressly, was virtually repealed. According to the view of Bovill, C.J., and Brett, J., it seems that there is now no power to recommit for non-payment of the same debt, but that where payment is ordered by instalments, a fresh power of committal accrues on non-payment of each. The section itself is now repealed (*l*).

But imprisonment does not operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if there had been no imprisonment (*m*).

*Discharge.* If the order is made for non-payment of money, the debtor may, before he is in custody of the gaoler, pay the amount endorsed upon it to the bailiff, who must then discharge him (*n*); or the amount may, at any time, be paid to the registrar of the court by which the commitment was made, or to the gaoler, or into the foreign court into which it has been re-issued under 9 & 10 Vict.

(*f*) 32 & 33 Vict. c. 62, s. 5, ante, p. 240.

(*g*) *Ex parte Foulkes*, 15 M. & W. 612.

(*h*) Order xix., rule 22.

(*i*) *Hayes v. Keene*, 12 C. B. 233; 21 L. J. C. P. 204; and see *Ex parte O'Neill*, 10 C. B. 57; 20 L. J. C. P. 69.

(*j*) *Horsnail v. Bruce*, L. R. 8 C. P. 378; 28 L. T. N. S. 705; 42 L. J. C. P. 140; 21 W. R. 597.

(*k*) *In re Boyce*, 2 E. & B. 521; 22 L. J. Q. B. 393.

(*l*) 38 & 39 Vict. c. 50, s. 12.

(*m*) 32 & 33 Vict. c. 62, s. 5.

(*n*) Order xix., rule 23.

c. 95, s. 104. If paid to the registrar, he must give a certificate (*o*), and on receipt of it the gaoler must discharge the debtor. If paid to the gaoler, the cost of transmission by post-office order must also be paid; the gaoler must then give a certificate and discharge the debtor. The costs of transmission will be part of the prescribed costs (*p*). The section of the Debtors Act just cited merely provides that a person imprisoned must be discharged on a certificate, as above, that he has satisfied the debt; but section 110 of the 9 & 10 Vict. c. 95, is not expressly repealed, and by that section leave of the court was required before the discharge. Still the section would probably be held to be repealed by implication.

*Certificate of money paid into court.* Where by virtue of any order of commitment to be executed in a foreign district any money shall be paid into the court of such district, the registrar shall transmit a certificate to the registrar of the home court of the amount so paid in, and shall account for and pay over the amount to the treasurer of his court at such time as the treasurer shall require; and the registrar of the home court shall, upon the receipt of the certificate, pay out of any money in his hands to the judgment-creditor the amount so certified to have been received by the registrar of the foreign court, and shall enter the same in the book mentioned in order xxvi., rule 2, and shall file the certificate, and he shall be allowed by the treasurer of his court, at his audit, the amount so paid (*q*).

If the debtor be arrested on a valid warrant after he has paid the debt to the creditor, and not in the manner prescribed by the rules, he cannot obtain damages against the registrar or bailiff for false imprisonment (*r*).

*Bankrupts.* Where a judgment-debtor upon the return-day satisfies the court that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, or that, in respect of the debt, resolutions have been duly registered under the 125th or the 126th section of the Bankruptcy Act, 1869, no order of commitment may be made (*s*).

No provision is made by the rules for the case of a debtor against whom a petition in bankruptcy has been

(*o*) Order xix., rule 25, form 9,  
Appendix F.

(*p*) 32 & 33 Vict. c. 62, s. 5;  
order xix., rule 24.

(*q*) Order xxvi., rule 3, form 9,  
Appendix F.

(*r*) *Davis v. Fletcher*, 2 E. & B.  
217; 22 L. J. Q. B. 429.

(*s*) Order xix., rule 19.

presented, but who has not been adjudicated a bankrupt. It would seem, therefore, that his remedy would be by application in bankruptcy under section 13 of the Bankruptcy Act, 1869, for an order to stay proceedings on the judgment summons, or pending proceedings under an arrangement or composition, by application under rule 260. A copy of the "Gazette" containing the order is sufficient evidence of an adjudication (*t*).

Where a judgment-debtor, after the making of an order of commitment against him and before its issue, files, in the court in which the order was made, an affidavit (*u*) stating that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, or that in respect of the judgment debt resolutions have been duly registered under either of the before-mentioned sections of the Bankruptcy Act, 1869, and at the same time gives notice to the judgment-creditor of the filing of the affidavit, no such order will issue, or if issued, but not executed, must be recalled (*v*).

Where a judgment-debtor is arrested, he may file in the county court within the district of which he is in custody, an affidavit as mentioned in the last rule, and give the notice to the judgment-creditor thereof, as therein required, and thereupon the judgment-debtor must be discharged out of custody upon the certificate of the registrar of the court (*w*).

It seems that if the certificate of discharge were refused by the registrar, application might be made to the judge of the court in which the order of imprisonment was made (*x*); and if he refused to grant it, that an application under the proceedings substituted for mandamus (*ante*, p. 82) might be made to the high court. If, however, section 110 is repealed, application might still possibly be made to the judge by way of appeal from the order of the registrar, or to the high court, to compel the registrar to grant the certificate, or in bankruptcy (*y*), or probably to one of the superior courts for a *habeas corpus* (*z*).

It is now settled that an order of discharge granted by a

(*t*) 32 & 33 Vict. c. 71, s. 10.

(*u*) Form 238.

(*v*) Order xix., rule 20.

(*w*) *Ibid.*, rule 21. See form of certificate of registrar, form 239.

(*x*) 9 & 10 Vict. c. 95, s. 110; but *quære* whether this section is

not repealed by sect. 5 of the Debtors Act, 1869.

(*y*) 32 & 33 Vict. c. 71, s. 13.

(*z*) See *Ex parte Kinning*, 16 L. J. Q. B. 257; but see *Ex parte Somers*, 24 L. J. C. P. 185; 24 L. J. Ex. 247.

court for relief of insolvent debtors, comprising a judgment debt in a county court, takes away from that court the power of commitment on a judgment summons for non-payment of the debt; and that a prohibition to the county court will be granted to restrain proceedings (*a*). And it seems that a prohibition would issue to stay proceedings on a debt provable in bankruptcy, barred by an order of discharge (*a*), or that the discharge might be raised as a defence (*ante*, p. 142).

*Costs.* All costs incurred by the plaintiff in endeavouring to procure or enforce an order or judgment will be deemed to be due in pursuance of such order or judgment under these provisions unless the judge otherwise orders (*b*), hence they will be included in the amount required to be paid by the judgment-debtor.

(*a*) *Copeman v. Rose*, 7 E. & B. 378; 20 L. J. C. P. 233, and other cases.  
679; 20 L. J. Q. B. 251; over-  
ruling *Abley v. Dale* (2), 11 C. B.

(*b*) Order xix., rule 27.

## CHAPTER IX.

### PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

MENTION has been made (*ante*, p. 98) that executors and administrators may in the county courts sue and be sued in their own names, as if the action were brought by or against them in their own right. The present remarks will be confined strictly to the rules of practice prescribed for proceedings by and against them.

BY EXECUTORS OR ADMINISTRATORS. In actions by executors or administrators, if the plaintiff fails, the costs will, unless the court orders otherwise, be awarded in favour of the defendant, and must be levied *de bonis propriis* (*a*).

NON-APPEARANCE. Where an executor or administrator, plaintiff or defendant, does not appear on the day of hearing, the provisions of sections 79 and 80 of 9 & 10 Vict. c. 95, and of section 10 of 13 & 14 Vict. c. 61 (*ante*, p. 178), will apply, subject to these rules (*b*).

AGAINST EXECUTORS OR ADMINISTRATORS. *Wasting assets.* A party suing an executor or administrator may charge in the summons that the defendant has had assets and has wasted them, and must state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the assets have been wasted (*c*).

In all cases where the defendant is so charged in the summons, if the court is of opinion that the defendant has

(a) Order xxv., rule 1.

(b) *Ibid.*, rule 2.

(c) *Ibid.*, rule 3. See *Winch v.*

*Winch*, 13 C. B. 128; 22 L. J. C. P. 104.

wasted the assets, the judgment will be, that the debt or damage and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis* (*d*). The non-payment of the amount of the demand immediately on the court finding such demand to be correct, and that the defendant is chargeable in respect of assets, will be conclusive evidence of wasting to the amount with which he is so chargeable (*e*).

*Judgment when representative character admitted.* Where a defendant, sued as an executor or administrator, admits his representative character, and only denies the demand, if the plaintiff proves it, the judgment (*f*) shall be that the demand and costs will be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis* (*g*).

When such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment (*h*) will be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of assets, *quando acciderint*; and the plaintiff must pay the defendant's costs of proving the administration of assets (*i*).

Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment (*j*) will be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint* (*k*).

Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment (*l*) will be for assets *quando acciderint*, and the plaintiff must pay the defendant's costs of proving the administration of assets (*m*).

Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial

(*d*) Form 139. See forms of warrants, forms 146, 147.

(*e*) Order xxv., rule 4.

(*f*) Form 140.

(*g*) Order xxv., rule 5.

(*h*) Form 141.

(*i*) Order xxv., rule 6.

(*j*) Form 142.

(*k*) Order xxv., rule 7.

(*l*) Form 143.

(*m*) Order xxv., rule 8.

administration of the assets, but does *not* prove the administration alleged, and has not established any other ground of defence, the judgment (*n*) will be to levy the amount of the demand, if so much assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint* (*o*).

Where judgment has been given against an executor or administrator, that the amount shall be levied upon assets of the deceased, *quando acciderint*, the plaintiff or his personal representative may issue a summons (*p*) in the special form specified, and if it appears that assets have come to the hands of the executor or administrator since the judgment, the court may order that the debt, damages, and costs be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*; but it will be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as described in rule 3 (*ante*, p. 249), and the provision of rule 4 will apply to such inquiry. And the court may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, &c., et si non, de bonis propriis* (*q*).

In actions against executors or administrators for which provision is not heretofore specially made, if the defendant fails as to any of his defences, the judgment will be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis* (*r*).

*Payment into court.* Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he must pay such sum into court, subject to the provisions already mentioned (*ante*, p. 144) in other cases (*s*).

(*n*) Form 144.

(*o*) Order xxv., rule 9.

(*p*) Form 115, form of warrant,  
147.

(*q*) Order xxv., rule 10. See

*Ellis v. Watt*, 8 C. B. 614; 19  
L. J. C. P. 113.

(*r*) Order xxv., rule 12.

(*s*) *Ibid.*, rule 11.



## CHAPTER X.

### ACTIONS SENT FOR TRIAL FROM THE HIGH COURT.

BEFORE the passing of the Judicature Acts, four different sections of the County Courts' Acts enabled the judges of the superior courts in which certain actions or proceedings were pending to order their removal into the county courts. Section 26 of the 19 & 20 Vict. c. 108, and section 7 of the 30 & 31 Vict. c. 142, applied to actions of contract; section 10 of the 30 & 31 Vict. c. 142, to actions of tort; and section 8 of the 30 & 31 Vict. c. 142, to suits or proceedings commenced in the Court of Chancery. The three sections last mentioned are by the Judicature Act, 1873, expressly extended to all actions commenced or pending in the high court, *in which any relief is sought which can be given in a county court* (a). Through an omission, apparently, the 19 & 20 Vict. c. 108, s. 26, is not included in the section just mentioned, and a point will doubtless be raised hereafter as to whether or not that section applies to actions in the high court (b). The words in italics will doubtless give rise to some discussion. In reference to the right to costs, it seemed reasonable to suppose that these words were intended to alter the rule as to the deprivation of costs by refusal of a certificate in all actions, whether they could be commenced in a county court or not (c); but the

(a) 36 & 37 Vict. c. 66, s. 67.

(b) This section is somewhat unfortunate. It was put down for repeal in the county courts bill introduced last session, but on its being shown that the provision was a valuable one, it was taken out of the schedule of repealed provisions, and conse-

quently is not repealed by the 38 & 39 Vict. c. 50. Sect. 32 of the 30 & 31 Vict. c. 142, extending it to the City of London Court, is, however, repealed, and, as has been shown above, section 25 has not been expressly extended to the high court.

(c) See *ante*, pp. 59, 65.

same argument cannot be held to apply to section 10, which expressly empowers a judge to send for trial to a county court actions of malicious prosecution, slander, and other actions over which the county courts have no jurisdiction. The value of the section is that it controls the maintenance of speculative actions of the very kind over which, but for the section, the county courts would have no jurisdiction. It is conceived that it was never intended to take away, and does not take away, so beneficial a provision; if so, of what value are the words in italics as bearing upon section 10? None whatever. It may be contended that the words are only intended to limit the operation of the various provisions contained in the 36 & 37 Vict. c. 66, s. 67, to those actions in which the county courts have the machinery for giving relief, or in which counter claims, not within the jurisdiction, are raised. Such a construction would be absolutely harmless. The several provisions will now be considered *seriatim*.

*Actions of contract.* (1) Where, in any action of contract brought in the high court, the claim endorsed on the writ does not exceed 50*l.*, or where such claim, though it originally exceeded 50*l.*, is reduced by payment into court, payment, an admitted set-off (*d*), or otherwise, to a sum not exceeding 50*l.*, a judge of the high court, on the application of either party, *after issue joined* (*e*), may, in his discretion, and on such terms as he thinks fit, order that the cause be tried in any county court which he may name (*f*). The power to make the order might, before the Judicature Act, have been delegated to a master under the 30 & 31 Vict. c. 68 (*g*), and now, it is conceived, may be exercised by a master of the Queen's Bench, Common Pleas, or Exchequer division, or by a district registrar (*h*). It is conceived that the application ought to be made to a judge or a master of the divisional court in which the action was commenced, or to any judge, master, or district registrar who is sitting to transact business for all divisions, or for divisions including the one in which the action is brought; and that the order is open to review by the court (*i*).

(*d*) See, as to the meaning of these words, *ante*, p. 13.

(*e*) See Jud. Act, order xix., rules 20, 21.

(*f*) 19 & 20 Vict. c. 108, s. 26.

(*g*) *Walsh v. Smith*, 30 L. T. N. S. 304; 22 W. R. 576.

(*h*) Jud. Act, order liv., rule 2; order xxxv., rule 4, *ante*, p. 3.

(*i*) See *Owens v. Woosman*, under 30 & 31 Vict. c. 142, s. 10, *post*, p. 258, and the cases there cited; 36 & 37 Vict. c. 66, s. 50.

After the order has been made, the plaintiff must lodge the order and the issue (*i.e.*, a copy of the pleadings) with the registrar of the county court named in the order, and the judge must appoint a day for the trial of the action (*j*). The registrar must endorse on the order the date on which it was lodged, and file it (*k*), and must send notice of the day of trial to both parties or their solicitors (*l*), by post or otherwise (*m*). The length of notice must now, it is conceived, be a ten days' clear notice (*n*), though it was formerly held that it was enough if the notice was reasonable. The day may be fixed by the judge himself, or he may allow the registrar to fix it for him (*o*).

The judge of the county court has no power to go behind an order appearing good upon the face of it. So where a summons had been heard by consent before one of the masters, who made the order, and the clerk then impressed the judge's signature upon it, the court made a rule absolute to compel the county court judge, who disputed the validity of the order, to hear the cause (*p*). In a previous case a similar difficulty had been removed by the issue of a new order (*q*).

An order having been made by inadvertence before issue had been joined, the cause was tried, and the unsuccessful party then applied to set aside the order and the proceedings; but this the court refused to do (*r*).

It was held before the Judicature Acts that at the hearing the judge might amend all defects and errors on the pleadings, such as variances, but not add a new plea, and so raise a different issue (*s*). It remains to be seen whether or not the judge will now be held to possess the full powers of amendment conferred by order xxvii. of the Judicature Acts. The judge was held to have power under the Common Law Procedure Act, 1852, s. 37, to amend a misjoinder of defendants (*t*), and will not, it is conceived, now be deprived of that power (*u*). The costs of the action

(*j*) 19 & 20 Vict. c. 108, s. 26.

(*k*) Order xx., rule 3.

(*l*) Form 79.

(*m*) 19 & 20 Vict. c. 108, s. 26.

(*n*) Order xx., rule 1.

(*o*) *Ipswich Gas Co. v. Norman*, 7 B. & S. 847; 15 L. T. N. S. 290.

(*p*) *Blades v. Lawrence*, L. R.

9 Q. B. 374; 43 L. J. Q. B. 133;

22 W. R. 613; 30 L. T. N. S. 378.

(*q*) See *May v. Watney*, 17 S. J. 643.

(*r*) *Tomkins v. Beard*, 18 L. T. N. S. 362; 16 W. R. 729.

(*s*) *Thomas v. Purcell*, 22 L. T. N. S. 174. See *Bain v. Gregory*, 14 L. T. N. S. 601, *contra*.

(*t*) *Rennison v. Walker*, L. R. 7 Ex. 143; 41 L. J. Ex. 43; 20 W. R. 471; 27 L. T. N. S. 167.

(*u*) See Jud. Act, order xvi., rules 13—16.

are subject to the same provisions as actions tried in the high court, but the judge of the county court has power to certify for costs (*v*); but not, it is conceived, after the return of the writ (*w*).

After the hearing, the registrar must certify the result to the master's office of the divisional court, and judgment in accordance with the certificate (*x*) may be entered in the high court (*y*). When the order of the county court is silent as to what costs are to be allowed, the master of the high court, in making his taxation, may take the county court scale of costs as his guide, so far as respects that part of the proceedings which took place in the county court (*z*). The jurisdiction to grant a new trial is not in the county court, but in the high court (*u*), and it is presumed that the motion should be made in the division out of which the writ issued. The motion must be made in the same time as if the cause had been tried before a judge of the high court (*b*)—*i.e.*, within four days from the day of trial, if the divisional court is then sitting, otherwise within the first four days of the sitting next after the trial, or such extended time as the court or judge may allow (*c*). On the motion for a new trial, the notes of the county court judge must be produced, unless the motion be made by counsel present at the trial, or the notes have been applied for and refused (*d*).

The new rules do not in any way expressly mention actions of contract remitted for trial under these provisions, although a separate form is provided for notice of trial, and also a form of certificate of the result of the trial. The rules made for actions remitted from the high court are expressed generally; but it is conceived that they do not operate to render actions remitted under this section the same as actions commenced in county courts (*e*), and that the provisions mentioned above, and the law established by the decisions upon them, are unchanged.

(*v*) *Taylor v. Cass*, L. R. 4 C. P. 614; 17 W. R. 860; 20 L. T. N. S. 667.

(*w*) *Ante*, p. 62.

(*x*) Form 103.

(*y*) 19 & 20 Vict. c. 108, s. 26; Jud. Act, order xli.

(*z*) *Wheatcroft v. Foster*, E. B. & E. 737; 27 L. J. Q. B. 277.

(*a*) See *Balmforth v. Pledge*, L. R. 1 Q. B. 427; 35 L. J. Q. B. 169; *Fletcher v. Baker*, L. R. 9 Q. B. 370; 43 L. J. Q. B. 112;

30 L. T. N. S. 675; 2 W. R. 646.

(*b*) *Copcutt v. Great Western Railway Co.*, L. R. 2 C. P. 465; 36 L. J. C. P. 240; 15 W. R. 799; 16 L. T. N. S. 384.

(*c*) Jud. Act, order xxxix., rule 1.

(*d*) *Dene v. Sawyer*, 26 L. T. N. S. 646; and see *Taylor v. Holt*, 3 H. & C. 454; *Welsh v. Mercer*, L. R. 8 Ex. 71.

(*e*) See order xx., rules 2, 3.

*Actions of contract.* (2) Where, in any action of contract commenced or pending in the high court, the claim endorsed on the writ does not exceed 50*l.*, or where such claim, though it originally exceeded 50*l.*, is reduced by payment, an admitted set-off (*f*), or otherwise, to a sum not exceeding 50*l.*, the defendant may, *within eight days from the day upon which the writ was served upon him*, if the whole or part of the demand of the plaintiff be contested, apply to a judge at chambers for a summons to the plaintiff to show cause why the action should not be tried in the county court, or one of the county courts, in which the action might have been commenced; and on the hearing of the summons, the judge must, if the action be one in which the relief sought (*g*) can be given in a county court, unless there be good cause to the contrary, order the action to be tried accordingly (*h*). It is conceived that this order might be made by a master or district registrar, and would be subject to review by the court, in the same mode as orders under the other provisions mentioned above (*i*).

After the making of the order, the plaintiff must lodge with the registrar of the county court mentioned in the order the original writ and the judge's order, and also a statement of the names and addresses of the several parties to the action, and their solicitors, if any, and a concise statement of his particulars, such as would be required on entering a plaint (*j*), signed by the plaintiff or his solicitor, and as many copies as there are defendants, and an additional copy for the judge (*k*). The registrar must then appoint a day for the trial, and endorse on the order the date of the lodgment, and file it (*l*). Notice must be given to the parties (*m*), by post or otherwise, by the registrar, ten clear (*n*) days before the day of trial; and with the notice he must send to each defendant a copy of the particulars, annexed to the notice, and sealed with the seal of the court (*o*).

After the transfer to the county court, the action and all proceedings therein must be heard and taken in the county

(*f*) See, as to these words, *ante*, p. 13; and see *Osborne v. Homberg*, W. N. 1875, 217.

(*g*) See observations, *ante*, p. 252.

(*h*) 30 & 31 Vict. c. 142, s. 7; 36 & 37 Vict. c. 66, s. 67.

(*i*) *Ante*, p. 253, and see under sect. 10, *post*, p. 258; 36 & 37 Vict. c. 66, s. 50.

(*j*) See *ante*, p. 115, form 50.

(*k*) Order xxxvii., rule 31.

(*l*) 30 & 31 Vict. c. 142, s. 7; order xx., rules 1, 3.

(*m*) Form 51.

(*n*) See, as to clear days, *ante*, p. 218.

(*o*) Order xx., rule 1; order ii., rule 7.

court, as if the action had been originally commenced there (*p*); and the defendant may proceed accordingly, and if he relies on any of the special defences of which notice is required, he must give notice in the manner required under the ordinary practice (*q*).

The costs of the parties, in respect of the proceedings after the order of transfer, must be taxed according to the scale of costs in use in the county courts; and the costs of the proceedings in the high court, before the order, according to the scale of costs in use in the high court (*r*).

It appears that not only is the practice of the county court to prevail after the order of transfer, but that the action itself becomes a county court action for all purposes, and is subject to the general provisions as to new trials and appeals obtaining in those courts (*s*).

*Difference between provisions as to actions of contract.* The main distinctions between the two enactments above mentioned appear to be these. Under the first, the judge's discretion to make the order seems to be unfettered, and he has power to impose terms; whilst under the second he must make the order, if the action is one in which the relief sought can be given in a county court, unless good cause be shown to the contrary. The application under the first cannot be made until after the pleadings have been completed and the parties are at issue, but then may be made any time before the trial; under the second the application must be made within eight days from the day of service of the writ, and appearance does not seem to be imperative before the application. Either plaintiff or defendant may apply under the first, but the defendant only can apply under the second. The judge may send the cause for trial to any county court under the first, but under the second he must send it to a county court in which the action might have been commenced. In the first case the proceedings remain in the high court, the judge merely trying the cause as a *quasi* officer of that court, and motion for a new trial must be made there; in the second the jurisdiction over the action for all purposes is transferred to the county court. And until the point as to the power to transfer under the first has been settled by judicial

(*p*) 30 & 31 Vict. c. 142, s. 7; order xx., rule 3.

(*q*) Order xx., rule 2. See *ante*, p. 140.

(*r*) 30 & 31 Vict. c. 142, s. 7; order xxxvi., rule 2.

(*s*) See *Moody v. Steward*, decided under section 10, *post*, p. 261. As to new trials and appeals, see *ante*, p. 195.



authority, it must not be overlooked that the first enactment has not been expressly extended to actions in the high court, whilst the second has.

*Actions of tort.* Any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort, may be commenced or pending in the high court, in which any relief sought can be given in a county court (*t*), may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff; and thereupon a judge of the divisional court in which the action is brought may make an order that *unless* the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs, to the satisfaction of one of the masters of such court, *or* satisfy the judge that he has a cause of action fit to be prosecuted in the high court, all proceedings in the action shall be stayed; *or* in the event of the plaintiff being unable or unwilling to give such security, *or* failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a county court to be named in the order (*u*).

It is conceived that the order may be made by a judge sitting at chambers for all divisions, although he is not a judge of the particular division of the court in which the action is brought (*v*), and that it may be made by a master of the Queen's Bench, Exchequer, or Common Pleas divisions, under order liv., rule 2, of the Judicature Act (*w*), or by a district registrar. The order is open to review by the court in the same way as other orders, but a strong case must be made to induce the court to interfere (*x*). In *Palmer v. Roberts* the Court of Exchequer absolutely refused to entertain an application to review the order of a master. The affidavit of the defendant, alleging that the plaintiff has no visible means, is a material affidavit, and must be produced on any application to the court to rescind an order made under these provisions (*y*).

The section was formerly held to apply to any action of

(*t*) See, as to these words, *ante*, p. 252.

(*u*) 30 & 31 Vict. c. 142, s. 10; 36 & 37 Vict. c. 66, s. 67.

(*v*) *Owens v. Woosman*, L. R. 3 Q. B. 469; 37 L. J. Q. B. 159; 16 W. R. 932; 18 L. T. N. S. 357.

(*w*) *Palmer v. Roberts*, 29 L. T.

N. S. 403; 22 W. R. 576, *n.*; *Walsh v. Smith*, 30 L. T. N. S. 304; 22 W. R. 576.

(*x*) *Owens v. Woosman*, *Palmer v. Roberts*, *supra*; *Jennings v. London General Omnibus Co.* (1), 30 L. T. N. S. 266.

(*y*) *Holmes v. Mountstephen*, L. R. 10 C. P. 474.



tort (z), and, it is conceived, would apply to an action of detinue (a). The order might be made whatever the amount claimed. In deciding whether the action was in tort or contract for the purposes of the section, it is probable that the court or judge would look at the substantial cause of action, irrespective of the form of the declaration, and decide accordingly (b). If there are two or more distinct claims in contract and in tort, it is doubtful whether any order can be made under any of the three provisions, unless part of the claim be abandoned in the action (c). Under a similar Act in Ireland (32 & 33 Vict. c. 100, s. 6), it was held that "visible means" meant properties which the defendant could reach to pay his costs, in the event of his obtaining a verdict (d). A case where one of two co-plaintiffs is abroad, and the other insolvent, is not within the section (e). No time is fixed by the statute for making the application; and it is conceived that, so long as the defendant uses due diligence after knowledge of the plaintiff's absence of means, he may apply at any stage of the proceedings before trial. The ordinary practice is, however, to apply before statement of defence, and where the cause of action is known, before declaration. The words of the Act do not specify the court of any particular district as the one to which the cause may be remitted; and it seems that the judge's discretion as to the court to which he sends it is unfettered, though subject to review by the divisional court (f).

Where the order has been made, the plaintiff must, at whatever stage of the proceedings it is made, lodge the original writ and the judge's order with the registrar of the county court, and also a statement of the names and addresses of the several parties to the action, and their solicitors, if any, and a concise statement in writing (g), signed by himself or his solicitor, of his particulars, such as would be required on entering a plaint, and as many copies as there are defendants, and an additional copy to

(z) See *Craven v. Smith*, L. R. 4 Ex. 146; 38 L. J. Ex. 90; 17 W. R. 710; 20 L. T. N. S. 400; and *Clapham v. Oliver*, 30 L. T. N. S. 365; 22 W. R. 655.

(a) See *ante*, p. 16.

(b) See *ante*, p. 67.

(c) See *Ex parte Baum, In re Edwards*, L. R. 9 Ch. 673; 44 L. J. Bk. 25; 31 L. T. N. S. 12; where, under the Bankruptcy Act,

1869, an order was made for staying proceedings on counts in contract, leaving the plaintiff to proceed on counts in tort.

(d) *Counsel v. Garvie*, Ir. Rep. 5 C. L. 74.

(e) *Sykes v. Sykes*, 38 L. J. C. P. 281.

(f) See *Owens v. Woosman*, *ante*, p. 258.

(g) Form 52.

be filed. The registrar must then appoint a day for the trial, and endorse on the writ the date of the lodgment, and file it (*h*). The registrar must give notice (*i*) to the parties, by post or otherwise, ten clear days (*j*) before the day of trial, and must annex to the notice a copy of the particulars, sealed with the seal of the court (*k*).

The county court named in the order will have the same power and jurisdiction over the action as if the parties had agreed by a memorandum signed by them (*l*), that the county court should have jurisdiction, and as if the action had been commenced by plaint in the county court (*m*). In other words, the county court has complete jurisdiction over the action, and it is in every way subject to the rules of practice in force in the county courts (*n*). Hence notice of special defences (*o*) must be given in the prescribed manner. If the action be one of libel or slander (over which the county court has no jurisdiction except when given by consent of the parties, or under these provisions), and the defendant relies as a defence upon the fact that the libel or slander complained of is true, he must state in his notice that it is true in substance (*p*). If he relies upon an apology, or payment into court and apology under the provisions of the 6 & 7 Vict. c. 96, ss. 1 and 2, he must give notice in writing of his intention to rely on it (*q*), signed by himself or his solicitor, to the registrar, five clear days before the day of trial (*r*). Money may be paid into court by way of damages, with an apology, in actions for a libel contained in any public newspaper or other periodical publication, by virtue of the 6 & 7 Vict. c. 96, s. 2, and when so paid in, the ordinary rules of practice as to payment into court (*s*) will apply so far as they are applicable (*t*). It is conceived that money can now be paid into court in any action sent for trial to a county court under the section now under consideration (*u*). A doubt existed previously as to whether it could be so paid in the cases excepted in the 15 & 16 Vict. c. 76, s. 70. So the power to order a taxation of costs is in the county court

(*h*) 30 & 31 Vict. c. 142, s. 10, order xx., rules 1, 3; order xxxvii., rule 31.

(*i*) Form 53.

(*j*) See *ante*, p. 218, as to clear days.

(*k*) 30 & 31 Vict. c. 142, s. 10; order xx., rule 1; order ii., rule 7.

(*l*) *I.e.*, under 19 & 20 Vict. c. 108, s. 23, *ante*, p. 17.

(*m*) 30 & 31 Vict. c. 142, s. 10.

(*n*) See order xx., rules 2, 3.

(*o*) *Ante*, p. 140.

(*p*) Order ix., rule 13.

(*q*) Forms 61, 62.

(*r*) Order xx., rule 4.

(*s*) *Ante*, p. 144.

(*t*) Order xii., rule 7.

(*u*) 9 & 10 Vict. c. 95, s. 82; Jud. Act, order xxx., rule 1.

judge only, and not in the high court (*v*); and it is conceived that the jurisdiction to grant a new trial is in the county, and not in the high, court (*w*).

The costs of the parties in respect of the proceedings after the order of transfer must be taxed according to the scale of costs in use in the county courts, and the costs of the proceedings in the high court, before the order, according to the scale of costs in use in the high court (*x*).

*Equity actions.* It is conceived that the provision which formerly enabled a judge of the Court of Chancery to transfer a suit or proceeding from his court to a county court, and which is now extended to all actions in the high court in which any relief is sought which can be given in a county court, will be held to apply to those actions which would formerly have been commenced in the Court of Chancery, and which will now usually be commenced in the Chancery division of the high court. The provision in question enables any of the parties to the action to apply at chambers to the judge in whose court the action has been commenced or is pending, to have the action transferred to the county court or one of the county courts in which it might have commenced. The judge may then—or even without an application if he thinks fit—make an order for the transfer (*y*). Though the subject-matter of the action may be within the county court jurisdiction, it has not been the practice to make orders of transfer without some special reason (*z*). Where the judge has made the order the court will not, except on strong grounds, interfere with the exercise of his discretion (*a*). Where the defendant is an officer of the county court to which it would be proper to transfer the action, it may be transferred, under 19 & 20 Vict. c. 108, s. 21, to an adjoining district (*b*). The order of the judge may be set aside or discharged upon notice by any divisional court, or by the judge himself sitting in court (*c*).

After the transfer, the action will proceed in the county court, and the parties will have the same rights and right of appeal as if the action had been originally commenced in a

(*v*) *Moody v. Steward*, L. R. 6 Ex. 35; 40 L. J. Ex. 25; 19 W. R. 161; 23 L. T. N. S. 465; *Jennings v. London General Omnibus Co.* (2), 30 L. T. N. S. 640.

(*w*) See *ante*, p. 257.

(*x*) 30 & 31 Vict. c. 142, s. 10; order xxxvi., rule 2.

(*y*) 30 & 31 Vict. c. 142, s. 8; 36 & 37 Vict. c. 66, s. 67.

(*z*) *Picard v. Hine*, 18 L. T. N. S. 704.

(*a*) *Linford v. Gudgeon*, L. R. 6 Ch. 359; 19 W. R. 577.

(*b*) *Ibid.*

(*c*) 36 & 37 Vict. c. 66, s. 50.

county court (*d*). The plaintiff must lodge with the registrar the order and the writ, and also a statement of the names and addresses of the several parties to the action and their solicitors, if any, and a concise statement of the particulars such as would be required on entering the plaint, signed by himself or his solicitor, and the registrar must then enter the action for trial, and give notice to the parties of the day appointed for trial, by post or otherwise, ten clear days before such day, and must annex a copy of the particulars sealed with the seal of the court (*e*). The registrar must endorse on the order of transfer the date on which it was lodged (*f*).

The rules above cited are also applicable to actions of tort and contract, and the intention seems to be to place all actions on the same footing, but no provision is made as to the transfer of documents filed in the action, an important matter in some equity actions.

*Transfer to the high court in equity matters.* The provisions for the transfer of equity actions under special circumstances to the high court will be found in chap. xiv., and for the transfer under the Judicature Act when the combined jurisdiction at law and in equity is exceeded, *ante*, p. 136.

(*d*) 30 & 31 Vict. c. 142, s. 8;      (*e*) Order xx., rule 1; order ii.,  
order xx., rules 2, 3.                      rule 7.

(*f*) Order xx., rule 3.

## CHAPTER XI.

### BILLS OF EXCHANGE ACT.

By Order in Council dated the 30th January, 1856, the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*a*) are extended to county courts, when the amount claimed does not exceed 50*l*. By a subsequent Order it is provided that the provisions of the Act may not apply to cases where the claim is for less than 10*l*. In such cases the remedy is therefore by plaint and summons in the ordinary way; and in any case, when proceedings could be taken under the Act, the plaintiff may, if he thinks fit, avail himself of the ordinary process (*b*). By means of the provisions of this Act a more speedy remedy is obtained in cases where there is no real defence, as the defendant is not allowed to appear and defend the action without first obtaining leave to do so, and such leave is not granted unless there appears to be a defence upon the merits.

To obtain the advantage of the provisions of the Act, all actions upon bills of exchange or promissory notes must be commenced within six months of the time after they have become due and payable (*c*).

"A transfer by endorsement of a bill of exchange vests in the endorsee a right of action against all the parties whose names are on the bill in case of default of acceptance or payment" (*d*); and proceedings may be commenced against all the parties by one plaint (*e*). In order to preserve his right of action against the drawer or any prior endorsers, it is necessary that the holder should duly present

(*a*) 18 & 19 Vict. c. 67.

(*c*) 18 & 19 Vict. c. 67, s. 1.

(*b*) *Waters v. Handley*, 6 D. & L.

(*d*) Byles on Bills, 142.

88; *Nind v. Rhodes*, 5 D. & L.

(*e*) 18 & 19 Vict. c. 67, s. 6.

621; 17 L. J. Q. B. 179.

the bill, or cause it to be presented on the day on which by custom it is payable, and that, if payment is refused, notice of dishonour should be given. The same rule does not, however, apply to acceptors, who still remain liable notwithstanding non-presentment or the omission to give notice. "A person who accepts a bill of exchange or makes a promissory note payable on a given day is liable to pay it when that day arrives, although no demand is made;" *per* Channell, B. (*f*). And presentment does not appear to be indispensable even where the bill is made payable by the accept or at abanker's (*g*), unless payable there, "and not otherwise and elsewhere" (*h*).

The notice of dishonour where all the parties live in London should be given so as to be received on the day after actual dishonour of the bill (*i*); but if the person to whom notice is necessary lives in another town, a reasonable time is allowed beyond this; and if reasonable diligence is shown, whether in town or country, notice on a later day is sufficient (*j*). "My impression is that the cases show that in calculating the time within which notice of dishonour must be given by the holder of a bill, the point for commencement is not the day after the bill becomes due, but the day after that on which the holder, after exercising reasonable diligence, is in a position to give the notice;" *per* Martin, B. (*k*).

Cheques on bankers are within the Bills of Exchange Act (*l*), and they are subject to many of the rules which regulate the rights and liabilities of parties to bills of exchange (*m*). The holder should present promptly and communicate without delay notice of non-payment, in order to preserve all his rights against the drawer and prior transferors, as if presentment be not made in a reasonable time, and the bank fail in the meantime, he will have to bear the loss himself (*n*). Presentment through the post-

(*f*) *Maltby v. Murrell*, 5 H. & N. 813; 29 L. J. Ex. 377.

(*g*) *Turner v. Harden*, 4 B. & C. 1; *Sebay v. Abithol*, 4 M. & S. 462.

(*h*) See *Rhodes v. Ghent*, 5 B. & Ald. 244.

(*i*) *Bateman v. Joseph*, 12 East, 433.

(*j*) *Gleadwell v. Turner*, L. R. 5 Ex. 59; 39 L. J. Ex. 31; 18 W. R. 317; 21 L. T. N. S. 674.

(*k*) *Ibid.*, L. R. 5 Ex. 61; and see *per* Maule, J., *Rowe v. Tipper*, 13 C. B. 249, 256; S. C., 22 L. J. C. P. 135.

(*l*) *Eyre v. Waller*, 5 H. & N. 460; 29 L. J. Ex. 246; 8 W. R. 450.

(*m*) See *per* Maule, J., *Webb v. Inwards*, 5 C. B. 485.

(*n*) See *Camidge v. Allenby*, 6 B. & C. 373.

office is a reasonable mode of presentment (*o*). "If the drawer dishonours the cheque, and the holder sends a notice of dishonour to the person from whom he received the cheque on the day following that on which the cheque was dishonoured, each previous transferor has one day in which to give notice of dishonour" (*p*)—*i.e.*, apparently, from the time when he is in a position to give notice (*q*). Notice of dishonour by the holder to the drawer is excused if the latter is aware of the want of sufficient effects to meet the cheque (*r*).

*Plaint and summons* (*s*). The general rules as to where the plaint must be entered have been already discussed (*t*), and those rules apply to actions commenced under these provisions. Some decisions upon the question as to what is a material part of a cause of action specially affecting bills of exchange will now be noticed. Drawing and endorsing (*u*), and acceptance (*v*), are material parts, so is notice of dishonour (*w*). When a plaintiff residing at N. drew a bill of exchange on the defendant, who resided at L., not within the jurisdiction of the N. court, and the defendant accepted the bill at L. and returned it to the plaintiff at N., it was held that the whole cause of action did not arise within the district of the N. court (*x*). So where a bill was drawn and accepted, and the endorser put his name on it within the city of London, but it was delivered to the endorsee elsewhere, it was held, in an action by the endorsee against the endorser, that the whole cause of action did not arise in London (*y*).

Personal service of the summons must, if possible, be obtained, but where the judge or registrar is satisfied by affidavit (*z*) that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evades

(*o*) See *Hare v. Henty*, 30 L. J. C. P. 302; 9 W. R. 738; *Prideaux v. Criddle*, L. R. 4 Q. B. 461; 38 L. J. Q. B. 232; 20 L. T. N. S. 695.

(*p*) Per Lush, J., *Prideaux v. Criddle*, *ubi sup.*

(*q*) See *Gleadwell v. Turner*, *ante*, p. 264.

(*r*) *Carew v. Duckworth*, L. R. 4 Ex. 313; 38 L. J. Ex. 149; 17 W. R. 927; 20 L. T. N. S. 862.

(*s*) Form of plaint-note, form 9; of summons, form 17.

(*t*) *Ante*, p. 50.

(*u*) *Betteley v. Buck*, 13 Jur. 368; *Huth v. Long*, 1 L. M. & P. 333; 19 L. J. Q. B. 325; *Trevor v. Wilkinson*, 31 L. T. N. S. 731.

(*v*) *Roff v. Miller*, 19 L. J. C. P. 278.

(*w*) *Huth v. Long*, *supra*.

(*x*) *Wilde v. Sheridan*, 21 L. J. Q. B. 260.

(*y*) *Buckley v. Hann*, 5 Ex. 43; 19 L. J. Ex. 151.

(*z*) Form 34.



service of the same, the judge or registrar may order (a) that the plaintiff may proceed as if personal service had been effected, but subject to such conditions as to the judge may seem fit (b). When the plaint is entered under these provisions, the new rules as to service on partners do not apply (b b). The proceedings may be commenced by one plaint against all or any of the parties to or endorsers of the bill (c).

Unless the defendant obtains leave to appear, the plaintiff, twelve days after service, on proof, by affidavit of the bailiff, of personal service of the summons, or of the order for leave to proceed, will obtain judgment by default for the amount claimed, together with interest and costs (d). No order on a judgment by default need be drawn up or served (e).

*Deposit of bill.* In any proceedings under the Bills of Exchange Act, the judge may order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the court, and further order all proceedings to be stayed until the plaintiff has given security for the costs (f).

*Lost bill.* No action lies at law on a negotiable bill, note, or cheque, or on the consideration, when the instrument has been lost; although it appears to be otherwise when the instrument is not negotiable (g). In the high court, the defendant who relies upon the fact that the bill or note has been lost must raise the defence by plea, otherwise the plaintiff may give secondary evidence (h). But in order to prevent the defendant from defeating the action by means of the plea of the loss of the instrument, it has been provided by the Common Law Procedure Act, 1854, that in any action on a bill of exchange or other negotiable instrument, the court or a judge may order that the loss of such instrument shall not be set up, if an indemnity is given, to the satisfaction of the court or judge, or a master, against the claims of any other person upon such negotiable instrument (i). By the 7th section of the Bills of Exchange Act, the provisions of the Common Law Procedure Act, 1854, and all rules made under it, are, so far as they are

- (a) Form 35.
- (b) 38 & 39 Vict. c. 50, s. 1;  
order viii., rule 33.
- (b b) *Ante*, p. 121; *per* Quain, J.,  
W. N. 1875, 248.
- (c) 18 & 19 Vict. c. 67, s. 6.
- (d) *Ibid.*, s. 1.

- (e) Order xviii., rule 3.
- (f) 18 & 19 Vict. c. 67, s. 4.
- (g) Byles on Bills, 351, 352.
- (h) Byles on Bills, 352;  
*Charnley v. Grundy*, 14 C. B.  
608.
- (i) 17 & 18 Vict. c. 125, s. 87.

applicable, extended to all proceedings to be had or taken under the Act (*j*); and as the provisions of the Bills of Exchange Act have been extended to county courts (*ante*, p. 263), it appears that the foregoing provisions relating to lost instruments are equally applicable to proceedings in the county courts (*k*). But if the plaint is entered under the ordinary process of the courts, and not under the Bills of Exchange Act, the plaintiff cannot avail himself of the section of the Common Law Procedure Act (*l*), as it is only under and by virtue of the former Act that the section is applicable to any proceedings in the county court.

The time for the application under the section would appear to be after the defendant has obtained leave to defend, and should not be delayed until the trial; for in the high court it appears that the application under the section should be made before the trial (*m*); and the plaintiff ought before action to offer to indemnify the defendant; otherwise, according to the practice in the high court, he may be made to pay the costs of the action as a term of the order under the above provisions (*n*). The fact of the loss should, it seems reasonable to suppose, be shown to be a defence on which it is intended to rely, in the affidavit for leave to defend. If the plaintiff does not, after notice of defence, obtain relief under the section, the loss of the instrument may be set up and the claim defeated (*n*). As there is no practice in county courts equivalent to practice in chambers, it is suggested that a plaintiff should avail himself of these provisions in the mode already suggested as to adjournments and amendments before the hearing (*o*).

*Leave to defend.* In order to obtain leave to defend, the defendant must, within twelve days after service of the summons, apply to the judge, or in his absence to the registrar. The application is *ex parte*. Unless the defendant pays into court the amount claimed in the summons, the application for leave to defend must be made on affi-

(*j*) 18 & 19 Vict. c. 67, s. 7. See *Leigh v. Baker*, 2 C. B. N. S. 367; *Knight v. Pocock*, 17 C. B. 177.

(*k*) See also 9 & 10 Vict. c. 95, s. 78, *ante*, p. 169.

(*l*) See *Noble v. Bank of England*, 33 L. J. Ex. 81; 11 W. R. 916.

(*m*) See *per* Bovill, C.J., *Con.*

*flans Quarry Co. v. Parker*, L. R. 3 C. P. 1, 13; S. C., 37 L. J. C. P. 51; 16 W. R. 127; 17 L. T. N. S. 283.

(*n*) *King v. Zimmerman*, L. R. 6 C. P. 466; 40 L. J. C. P. 278; 19 W. R. 1009; 24 L. T. N. S. 623.

(*o*) *Ante*, p. 169.

davit (*p*) stating such facts as show that there are grounds for giving leave to defend; and the affidavit and a copy must be filed with the registrar (*q*). If the judge or registrar is satisfied that the defendant has a good defence, and it is sufficient that the affidavit should show reasonable and plausible grounds of defence (*r*); or if the defendant pays the amount into court, leave will be given to defend on such terms, as to security or otherwise, as the judge thinks fit (*q*). The security, when required, must be given in the form of a bond (*s*), or by deposit of money. For the provisions as to securities, see chap. vii.

*Hearing.* Where leave is given to defend, the registrar must appoint the cause to be heard at the first convenient sitting of the court to be held after leave is granted. He must send notice (*t*) to the plaintiff and a copy of the defendant's affidavit, and he must also send notice (*u*) of the day fixed for the hearing to the defendant (*r*). The defendant may avail himself of any defence of which the facts admit, and is not confined to the particular defence disclosed in the affidavit for leave to defend (*w*).

*Setting aside judgment.* After judgment the judge may, under special circumstances, set aside the judgment, and if necessary, stay or set aside execution, and he may give leave to defend if it appears reasonable to him to do so, and on such terms as he thinks fit (*x*). This section appears to apply only to cases where judgment has been obtained in default of obtaining leave to defend.

The application must be made to the judge, and until he can hear it execution will be stayed, upon the defendant's giving security to abide the decision of the judge (*y*).

*Execution.* Execution will issue in the same manner, and the same provisions at and after the trial will apply to these proceedings as have been already described in the foregoing pages (*z*).

(*p*) It is not necessary that the defendant should make an affidavit of merits. It is enough if he discloses a legal or equitable defence. Non-joinder of a defendant is a sufficient defence: *Casella v. Darton*, L. R. 8 C. P. 100; 42 L. J. C. P. 58. For form of affidavit, see form 10, Appendix F.

(*q*) 18 & 19 Vict. c. 67, s. 2; order xxxvii., rule 47.

(*r*) *Clay v. Turley*, 27 L. J. Ex. 2; *Mathews v. Marsland*, 27 L. J. Ex. 148.

(*s*) Form 49.

(*t*) Form 11, Appendix F.

(*u*) Form 19.

(*v*) Order xxxvii., rule 48.

(*w*) *Saul v. Jones*, 1 E. & B. 591; 28 L. J. Q. B. 37.

(*x*) 18 & 19 Vict. c. 67, s. 3.

(*y*) Order xxxvii., rule 49.

(*z*) See chap. viii.

## CHAPTER XII.

### REPLEVIN.

"By the common law, whenever the goods of one man had been wrongfully distrained by another (not being a sheriff or his officer acting in execution of the process of a superior court), and the party out of whose possession the goods had been taken wished to have them restored to him, and to try the lawfulness of the seizure, he might get back his goods by giving security to the sheriff of the county to prosecute an action with success, and make out the injustice of the taking. The proceeding by which this was accomplished was called a replevin, or the getting back of a chattel taken and detained as a pledge or security, by substituting another pledge in place of the thing taken" (a).

Replevin lies in several cases where cattle, goods, and chattels are unlawfully taken (b), but it is seldom resorted to, except in cases of wrongful distress for rent or *damage-feasance*.

If a landlord distrains for rent, *no* rent being in arrear or due, the proper remedy is by action under 2 Wm. & M. sess. 1, c. 5, s. 5, for double the value of the things distrained. If *some* rent is due, and the landlord makes an excessive seizure, an action will lie under the Statute of Marlbridge (52 Hen. 3, s. 4), whether a tender has or has not been made by the tenant of the sum really due (c), or after tender, he may proceed by action of replevin (d), or for trespass, or conversion. The taking of an excessive distress

(a) Addison on Torts, 3rd edit., p. 464.

(b) Com. Dig., Replevin.

(c) *Smith v. Ashjorth*, 29 L. J. Ex. 259; *Bail v. Mellor*, 19 L. J. Ex. 279; *Loring v. Warburton*, 2 B. & E. 507; 28 L. J. Q. B. 31;

*Fell v. Whitaker*, L. R. 7 Q. B. 120; 41 L. J. Q. B. 78.

(d) *Glynn v. Thomas*, 11 Ex. 870; 25 L. J. Ex. 125; *Gulliver v. Cosens*, 1 C. B. 788; 14 L. J. C. P. 215.

is in itself an unlawful act (*e*); and if the tenant pays money to get rid of the excessive distress, he ought first to tender the amount really due; he may then recover the excess, together with damages for the excessive seizure (*f*). The same principles apply where the seizure is not excessive; the tenant may at any time tender the amount due, with costs, and on the landlord's refusal to accept the amount he becomes a trespasser, and an action of trespass or replevin will lie against him. Formerly the landlord had a right to refuse payment after impounding, and to proceed to a sale, but since the 2 Wm. & M. stat. 1, c. 5, s. 2, and 11 Geo. 2, c. 19, a sale after tender is illegal (*g*).

The mere claim of more rent than is due is not *per se* actionable, and, unless followed by an excessive seizure, no action lies (*h*); and if the tenant pays the amount claimed, although excessive, before any seizure, or even after a seizure which is not excessive, without making a tender of the amount really due, he cannot recover the excess (*i*).

*Replevin in county courts.* The powers and responsibilities of the sheriff with respect to replevin bonds are now entirely taken away; and the registrar of the county court of the district in which any distress subject to replevin is taken is empowered to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, such process being executed by the high bailiff (*j*).

The person whose goods have been distrained, in order to recover them, is bound to give security for the due prosecution of an action of replevin against the person who has distrained. The security may be by deposit of money or by bond (*k*); and upon the security being completed, the goods will be restored to the claimant. To effect this purpose, immediately after the distress has been put in, or at the latest, before sale, the claimant must give notice of his intention to replevy to the registrar of the county court of the district in which the distress has been levied. He must also state whether the action of replevin is to be commenced in a county or in the high court, and

(*e*) *Bail v. Mellor*, *ubi sup.*, per Parke, B.; *Fell v. Whitaker*, per Lush, J., L. R. 7 Q. B. 125.

(*f*) *Loring v. Warburton*, *ubi sup.*; *Johnson v. Upham*, 2 El. & El. 250; 28 L. J. Q. B. 252; *Fell v. Whitaker*, *supra*.

(*g*) *Tancred v. Leyland*, *supra*.

(*h*) *Tancred v. Leyland*, 16

Q. B. 669; 20 L. J. Q. B. 316; *French v. Phillips*, 1 H. & N. 564; 26 L. J. Ex. 82.

(*i*) *Glynn v. Thomas*, *supra*.

(*j*) 19 & 20 Vict. c. 108, s. 63; 23 & 24 Vict. c. 126, s. 22.

(*k*) 19 & 20 Vict. c. 108, ss. 70, 71, forms 183, 184.

must name the persons whom he proposes as his sureties (*l*), if he intends to give a bond, or state his willingness to deposit money, if he intends to give security in that way. The registrar then gives notice to the distrainer (*m*). On the day named by the registrar in the notice, the security will be completed (*n*). The security thus required by bond or deposit will be for such an amount as the registrar may deem sufficient to cover the alleged rent or damage in respect of which the distress has been made, and the probable costs of the action of replevin. If the action is to be brought in a county court, the condition of the bond or deposit will be to commence an action of replevin against the distrainer in the county court of the above-named district within one month from the date of the bond or deposit, and to prosecute such action with effect and without delay, and to make a return of the goods, if a return should be adjudged (*o*).

Or the condition may be to commence an action in the high court, within one week from the date of the bond or deposit, and to prosecute such action with effect and without delay, and, unless judgment be obtained by default, to prove that the claimant had good ground for believing that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that such rent or damage exceeded 20*l.*, and to make a return of the goods, if a return should be adjudged (*p*).

When the security has been completed, the registrar issues his warrant (*q*) to the high bailiff, directing him to replevy and deliver the goods to the claimant (called the replevisor), and the bailiff then delivers up the goods, and makes a return accordingly.

*Security.* The general provisions in regard to the giving of security in county courts has already been explained; and it is conceived that the duty and responsibility of the registrar in regard to the taking of sufficient security is the same in regard to replevins as in other cases—*i.e.*, he must exercise “proper and vigilant discretion” (*r*), but must not be held to warrant the sufficiency of the sureties. In other words, it is conceived that the registrar could

(*l*) See form 47.

(*m*) Form 182.

(*n*) See *ante*, p. 216, where the general practice as to giving security will be found.

(*o*) 19 & 20 Vict. c. 108, s. 66, form 184.

(*p*) 19 & 20 Vict. c. 108, s. 65, form 183.

(*q*) Form 185.

(*r*) See the judgments in *Young v. Brompton Waterworks Co.*, 31 L. J. Q. B. 14; 10 W. R. 57; 5 L. T. N. S. 310.



only be held responsible in damages for injury sustained by the party for whose benefit the security was taken, if he performed his duty negligently, and that negligence caused the damage (s).

The condition to prosecute the action with effect is not satisfied if the plaintiff in replevin fails in his suit (t); he must prosecute his action "to a not unsuccessful determination" (u). The condition to prosecute without delay is satisfied if a suit is commenced and carried regularly forward, according to the ordinary practice of the court (v); but want of due diligence may, if the defendant in replevin is prejudiced by the delay, constitute a breach of the condition (w). Where a defendant had permitted two years to elapse without taking any steps in the replevin suit, it was held that the bond was forfeited, and that the obligee might recover, although he had not signed judgment of *non pros.* (x). If the plaintiff in replevin be hindered from prosecuting the suit with effect by the default of the defendant in replevin, the court will prevent the latter from proceeding on the bond (y).

*Proceedings in replevin.* After the security has been completed and the goods replevied, the replevisor must proceed with his action of replevin either in a county or the high court, according to the condition of the security. The action in the county court must be commenced by plaint in the court of the district in which the distress was taken (z). No other cause of action may be joined in the same summons (a). On entering the plaint the plaintiff must in the ordinary manner (b) deliver particulars specifying and describing the cattle, or the goods and chattels taken, and also of the distress or other taking of which he complains (c). It is conceived that the plaintiff, in replevin, may pay

(s) The sheriff was formerly under a heavier responsibility, but the later cases seem to show that he is only bound to exercise reasonable diligence. See *Hindle v. Blades*, 5 Taunt. 225; *Sutton v. White*, 8 Moore, 27; *Scott v. Waithman*, 3 Stark. 168; *Plumer v. Briscoe*, 11 Q. B. 46; *Jeffery v. Bastard*, 4 A. & E. 823.

(t) *Tunncliffe v. Wilmot*, 2 C. & K. 626; *Tummons v. Ogle*, 6 E. & B. 571; 25 L. J. Q. B. 403.

(u) *Jackson v. Hanson*, 8 M.

& W. 487; *Perreau v. Bevan*, 5 B. & C. 284.

(v) *Morris v. Mathews*, 2 Q. B. 293.

(w) *Gent v. Cutts*, 11 Q. B. 288; *Harrison v. Wardle*, 5 B. & Ad. 146.

(x) *Axford v. Perrett*, 4 Bing. 586.

(y) *Evans v. Bowen*, 19 L. J. Q. B. 8.

(z) 9 & 10 Vict. c. 95, ss. 119, 120.

(a) Order xxii., rule 1.

(b) *Ante*, p. 115.

(c) Order xxii., rule 2.



money into court in satisfaction by virtue of the Common Law Procedure Act, 1860, s. 23, and 9 & 10 Vict. c. 95, s. 78.

All actions of replevin in cases of distress for rent or for *damage-feasance* will be tried in a summary way as in other cases (*d*), and either party may require a jury (*e*).

If the defendant takes no steps, under the provisions mentioned below, to remove the plaint into the superior court, the judge has jurisdiction to try the action, although the title to hereditaments of greater yearly rent or value than 20*l.* may be in question (*f*).

*Certiorari.* Any action of replevin may be removed into the high court by writ of *certiorari*, on the application of the defendant (*g*). He must give security to be approved by a master of the high court, for such amount, not exceeding 150*l.*, as the master shall think fit, conditioned to defend the action with effect (*h*), and unless the replevisor shall discontinue or shall not prosecute the action, or be nonsuited, to prove before the high court that the defendant had good ground for believing either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress was taken exceeded 20*l.* (*i*).

*Judgment.* If the distress is for rent, or for any other claim for which a distress may be lawfully taken, and the defendant succeeds in the action, the court or the jury, as the case may be, will, if the defendant requires it, find the value of the goods distrained; and if the value be less than the amount of rent in arrear, judgment will be given for the amount of such value; but if the amount of rent in arrear be less than the value so found, judgment may be given for the amount of such rent. Judgment may be enforced in the same manner as any other judgment of the court (*j*).

If the distress is for *damage-feasance*, and the defendant is entitled to judgment for a return, the judge or the

(*d*) Order xxii., rule 3.

(*e*) Order xvi., rule 3.

(*f*) *Fordham v. Akers*, 33 L. J. Q. B. 67; 9 L. T. N. S. 478; S. C., *Reg. v. Gurdon*, 12 W. R. 201.

(*g*) See the practice as to the application for a *certiorari*, *ante*, p. 132.

(*h*) See *Tummons v. Ogle*, *supra*.

(*i*) 19 & 20 Vict. c. 108, s. 67. For further particulars as to a *certiorari*, see *ante*, p. 132.

(*j*) Order xxii., rule 4. For forms of judgments, see forms 186, 187.

jury, as the case may be, will, if the defendant requires it, find the amount of the damage sustained by the defendant, and judgment will then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damage so found (*k*).

In all cases of replevin other than those arising out of a seizure by way of distress, the judgment for the defendant will be for a return of the goods with or without costs (*l*).

One who has replevied goods distrained, and obtained judgment in an action of replevin, cannot maintain an action for damages in respect of the taking of the goods (*m*).

*Costs.* Where the fees of court are paid on 5*l.* or upwards, costs may be allowed to solicitors upon the scale applicable to actions of contract where the amount claimed exceeds 20*l.* if the judge so orders (*n*).

*Appeal.* An appeal is allowed in actions of replevin. The appeal lies as of right when the amount of rent or damage exceeds 20*l.* (*o*), and by leave of the judge in all other cases (*p*). The practice in regard to appeals is the same as in ordinary cases (*q*).

(*k*) Order xxii., rule 5.

(*l*) *Ibid.*, rule 6.

(*m*) *Gilbs v. Cruikshank*, L. R.  
8 C. P. 454; 42 L. J. C. P. 273;  
21 W. R. 734; 28 L. T. N. S. 735.

(*n*) Order xxxvi., rule 9.

(*o*) 19 & 20 Vict. c. 108, s. 68.

(*p*) 30 & 31 Vict. c. 142, s. 13.

(*q*) *Ante*, p. 198.

## CHAPTER XIII.

### PROCEEDINGS IN RELATION TO LAND.

#### PART I. EJECTMENT.

THE county courts have jurisdiction to entertain and adjudicate upon all actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect of them, exceeds the sum of 20*l.* by the year (*a*). In the new rules, in place of the familiar term "ejectment," the action is called "an action for the recovery of land;" it is conceived, however, that the action of ejectment is the only one to which the rules in question can properly apply. Where no rule is expressly provided for actions of ejectment, the ordinary practice must be followed.

Under this section it has been decided, that the rent payable means the rent payable as between the litigant parties, and not any rent that might be paid by a sub-lessee; and that the latter rent, if above 20*l.*, though strong evidence of value, is not conclusive against the jurisdiction of the county court (*b*). The value of the tenements means the actual marketable value, and the rent which would be paid by the tenant in occupation is the best criterion of that value; *per* Cockburn, C.J. (*c*). The deduction of a yearly ground-rent payable by the landlord from the rent of the tenant, thereby bringing it within the prescribed limits, was, in the case last cited, held to be wrong (*d*).

Where the judge decided on the facts that the value of

(*a*) 30 & 31 Vict. c. 142, s. 11.

(*b*) *Brown v. Cocking*, L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; 16 W. R. 933; 18 L. T. N. S. 560.

(*c*) *Elston v. Rose*, L. R. 4 Q. B. 7.

(*d*) *Ibid.*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; 17 W. R. 52; 19 L. T. N. S. 280.

the premises did not exceed 20*l.*, the Court of Queen's Bench held that it could not review the decision by prohibition (*b*); but where the judge decided as to the value on a wrong assumption of a point of law, the court ordered a prohibition (*d*).

PROCEEDINGS.—*Plaint and parties.* An action of ejectment must be commenced in the district in which the land, tenement, or hereditament sought to be recovered is situate (*e*).

The action must be commenced by plaint, as in ordinary cases, and all persons in whom title is alleged must be made plaintiffs, and the persons alleged to be in possession, or apparent possession, of the property sought to be recovered, defendants (*f*). The plaintiff must, on entry of the plaint, deliver to the registrar a statement in writing containing a full description of the property, and its annual value and rent (if any be fixed or paid), and as many copies of the statement as there are defendants (*g*). The summons will then issue.

*Summons.* It must contain all the particulars of the parties required in other cases, and there must be annexed a sealed copy of the above statement, which will be deemed part of the summons. The summons must be delivered to the bailiff forty clear days at least before the return-day (*h*).

*Service.* The summons is served like other ordinary summonses, except that it must be served thirty-five clear days before the return-day (*i*). In case of vacant possession, or if the defendant cannot be found, and his place of abode is not known, or admission cannot be obtained for service, a copy may be affixed to the door of the dwelling-house, or to some conspicuous part of the property sought to be recovered. Such affixing will be deemed good service on the defendant (*j*).

*Removal into high court.* Either the defendant or his landlord may within one month from the service of the summons apply to a judge of the high court at chambers for a summons to the plaintiff to show cause why the action should not be tried in the high court, on the ground

(*b*) *Brown v. Cocking, supra.*

(*d*) *Elston v. Rose, supra.*

(*e*) 30 & 31 Vict. c. 142,  
s. 11.

(*f*) Order v., rule 10.

(*g*) Order vii., rule 5; order  
xxxvii., rule 31.

(*h*) Order viii., rule 7; order ii.,  
rule 7; form 153.

(*i*) Order viii., rule 7.

(*j*) *Ibid.*, rule 20.

that the title to lands or hereditaments of greater annual value than 20*l.* would be affected by the decision in such action, and if the judge is satisfied thereof, he may order the action to be tried in the high court, and the proceedings in the county court must then be discontinued (*k*).

It is conceived that such an order as the above puts an end to the proceedings entirely, and obliges the plaintiff to commence *de novo* in the high court. It may, however, be contended that the order is in the nature of a *certiorari*, and that, following the practice in such cases, the plaintiff has no need to issue a writ in the high court (*l*).

*Persons not made defendants.* Any person not named as defendant in the summons may, by leave of the registrar, appear and defend, on filing, twelve clear days before the return-day, an affidavit, with as many copies as there are plaintiffs and defendants, showing that he or his tenant is in possession of the property in dispute, or some part of it, such part being described with reasonable certainty. Upon such affidavit being filed, the registrar will then add the name, address, and description of the person filing the affidavit to the original defendants in the plaint-book, and ten clear days before the return-day must give notice to the plaintiffs and defendants, by post or otherwise, of the filing of the affidavit, and that the person filing it will appear and defend at the trial; and a copy of the affidavit must be annexed to the notice (*m*).

*Limited defence.* Any defendant may limit his defence to a part of the property claimed only. He must file a notice in writing (*n*), signed by himself or his solicitor, of such limited defence, to the registrar twelve clear days before the return-day, and describe with reasonable certainty the part of the property to which he intends to limit his defence. He must deliver to the registrar as many copies of his notice as there are plaintiffs, and an additional copy. The registrar must send one, sealed with the seal of the court, to each plaintiff ten clear days before the return-day by post (*o*).

*“Reasonable certainty.”* Want of reasonable certainty in the description of the property, or of any part, in any summons or notice, will not nullify it; but the judge may

(*k*) 30 & 31 Vict. c. 142, s. 12.

(*n*) Form 156.

(*l*) See *ante*, p. 132.

(*o*) Order ix., rule 4; order ii.,

(*m*) Order ix., rule 3, form 155.

rule 7; order xxxvii., rule 31.

amend it at the hearing, or order an amended description to be delivered on such terms as he thinks fit (*p*).

*Defendant confessing action.* Any defendant may any time before the return-day confess the action as to the whole or any part of the property claimed. He must sign an admission of the title of the plaintiff, in presence of the registrar or his clerk, or a solicitor, who must attest the signature. The registrar on receipt of the admission must give notice by post to the plaintiff; and the judge, on the return-day, may, on proof of the defendant's signature, by affidavit or otherwise, if not attested by the registrar or his clerk, and without further proof of the plaintiff's title, if no defendant other than the defendant signing such admission defends for the lands or the part of it, give judgment for the plaintiff and costs. The plaintiff will not be entitled, however, to any costs incurred after the receipt of the notice, except the costs of attending on the return-day, unless the judge otherwise orders. Where the admission is not signed by all the defendants defending for the lands or the part, the trial will proceed against the non-admitting defendants, as if no admission had been signed (*q*).

One of several defendants, who defends separately for a portion of the property for which no other defendant defends, may also confess the action as to such part. The action will then proceed against the other defendants (*r*).

*Plaintiff not proceeding as to part or whole.* If a plaintiff desires to discontinue proceedings as to the whole or any portion of the property, he may discontinue in the mode prescribed by order xii., rule 1 (*s*).

The provisions of the old rule (256) as to payment into court by mortgagors are not again prescribed. The forms corresponding will, however, be found in the Appendix, and are 178, 179, and 180.

**HEARING.** Actions are tried in the manner already explained in other cases; and either party may require a jury (*t*).

*Parties not appearing.* Where any defendant appears, and the plaintiff does not, the case will be struck out, and

(*p*) There was formerly a rule to this effect, but it is now unnecessary to provide specially for it. The rule was originally taken from 15 & 16 Vict. c. 76, s. 175.

(*q*) Order xxxvii., rule 24,

forms 157, 158, 175; 15 & 16 Vict. c. 76, s. 175.

(*r*) See order xii., rules 2, 3, *ante*, pp. 131, 140, form 176.

(*s*) *Ante*, p. 131, form 154.

(*t*) Order xvi., rule 3.

the defendant appearing will have judgment for his costs. If the plaintiff appears, and no defendant appears, the plaintiff, on proof of service of the summons, will be entitled to judgment for the recovery of possession (*u*).

*Title expiring before trial.* If it appears at the hearing that the plaintiff's title existed as alleged in the summons, and at the time of entry of the plaint, but that it expired before the return-day, the plaintiff will be entitled to judgment that he was so entitled, and for his costs, unless the court otherwise orders (*v*).

*Special case.* No provision is made by the rules for stating a special case, in accordance with the former practice. The heading and conclusion of a case will be found, however, in the Appendix, form 163.

*Execution.* If judgment (*w*) is given for the plaintiff, execution may issue upon the day named in the judgment; and if no day is named, it may issue after the expiration of fourteen clear days from the day on which judgment was given (*x*). If judgment has been obtained for recovery of possession and costs, there may be either one warrant or separate warrants of execution for the recovery of possession, and for the costs, at the election of the plaintiff (*y*).

If judgment is given for the defendants or any of them, with costs, execution may issue for the costs against the plaintiff upon the day named in the judgment; and if no day be named, it may issue after the expiration of fourteen clear days from the day on which judgment was given, unless the judge otherwise order (*z*).

*Effect of death of parties.* The provisions as to death of parties, and as to bringing all proper persons before the court (*ante*, p. 108), apply to ejectment equally with other actions; and the special provisions formerly contained in the rules are not again prescribed. See the forms, forms 168, 169, 172, 173.

**SMALL TENEMENTS.** Ejectment may not be brought to recover possession of a tenement under the provisions of the 30 & 31 Vict. c. 142, s. 11, if they can be taken under

(*v*) Order xvi., rule 5, *ante*, forms 157—162, 166, 167, 170, p. 178. 171, 174, 177.

(*v*) Order xviii., rule 8, form 160. (*x*) Order xviii., rule 9, forms 164, 165.

(*w*) See forms of judgment, (*y*) *Ibid.*, rule 10.

(*z*) *Ibid.*, rule 11.



the provisions mentioned in part 3 of the present chapter (a).

**APPEAL.** An appeal lies to the high court, in all actions of ejectment, in the same manner and subject to the same provisions, as have been already described in the foregoing pages (*ante*, chap. vi.) (b). It is conceived that an appeal lies as of right, irrespective of the value or rental of the premises sought to be recovered (c).

*Costs.* See *ante*, p. 191.

## PART II. ACTIONS IN WHICH TITLE IS IN QUESTION.

The original county court statute expressly excluded the county courts from any jurisdiction in actions in which "the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise," came in question (d); but it was enacted, by a subsequent statute, that, by consent of the parties, any action which might be brought in a superior court of common law might be brought in a county court (e); and by the same statute it was also enacted that when "the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise," *incidentally* came in question, in any action, the judge should have power to decide the claim, with the written consent of both parties (f). It was not, however, until after the Act of 1867 that a plaintiff could bring an action in which title was in question without the risk of being defeated if the defendant objected to the jurisdiction (g). The section of the Act of 1867 provides that the county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of 20*l.* by the year, or in case of an easement or licence where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed, or on, through, over, or under which such easement

(a) Order xxxvii., rule 25. See *Williamson v. Bissil*, 7 H. & N. 391; 31 L. J. Ex. 131; and as to abatement generally, *ante*, p. 184.

(b) 30 & 31 Vict. c. 142, s. 13.

(c) See *ante*, p. 201.

(d) 9 & 10 Vict. c. 95, s. 58.

(e) 19 & 20 Vict. c. 108, s. 23. See *ante*, p. 17.

(f) *Ibid.*, s. 25. See *ante*, p. 17.

(g) See, however, the cases mentioned below.

or licence is claimed, shall exceed the sum of 20*l.* by the year (*h*). The disabling words of the original statute being still unrepealed, it is conceived that an action in which the title to any toll, fair, market, or franchise arises cannot be entertained, notwithstanding the comprehensive form of the section of the Act of 1867.

It has already been shown (*i*) that where the county courts have exclusive jurisdiction over any particular matter, or where they have a distinct and unlimited jurisdiction in a kind of action not comprised in the 9 & 10 Vict. c. 95, s. 58, the jurisdiction is available without regard to the fact of title being in question (*j*)—*e.g.*, in replevin.

In those cases in which the county courts have not thus complete jurisdiction irrespective of any question of title, there will, since the Act of 1867, be two questions to be decided instead of one, in order to ascertain whether the court has jurisdiction or not—first, is title in question; second, does the yearly rent or value exceed 20*l.*? At whatever stage of the suit these two questions can be answered in the affirmative, the jurisdiction of the court ceases. The duty of the judge is then to strike out the cause (*k*), unless the defendant expressly consents to the jurisdiction (*l*), or unless the defect in the jurisdiction be cured by acquiescence and waiver (*m*). A further remedy by prohibition is at all times open to the defendant (*n*).

Before the Act of 1867, in an action for injury to the plaintiff's reversionary interest in land, the particulars showed that the injury complained of was the removal of a boundary fence between the lands of the plaintiff and the defendant, also the cutting down of trees, and the erection of a new fence in such manner as to make it appear that a portion of the plaintiff's land belonged to the defendant. These particulars were held so far to disclose the nature of the action, that on the defendant's showing that the title was *bonâ fide* in dispute, a pro-

(*h*) 30 & 31 Vict. c. 142, s. 12.

(*i*) *Ante*, pp. 10, 11.

(*j*) *Reg. v. Harden*, 2 E. & B. 189; 22 L. J. Q. B. 299; *Hertford Union v. Kimpton*, 11 Ex. 295; 25 L. J. M. C. 41; *Fordham v. Akers*, 33 L. J. Q. B. 67; 9 L. T. N. S. 478; 12 W. R. 201. The decisions under the provisions for the recovery of small tenements (*post*, p. 287), which have been held to be subject to the restric-

tions as to title, are somewhat opposed to this principle; but they are reconcilable on the ground that a speedy remedy between landlord and tenant only was intended to be given, and not power to decide questions of ownership.

(*k*) *Ante*, p. 182.

(*l*) *Ante*, p. 17.

(*m*) *Ante*, p. 80.

(*n*) *Ante*, p. 69.

hibition was granted before the hearing (o). It would now be necessary to show further, on an application for a prohibition before the hearing, that the yearly rent or value of the land exceeded 20*l.*; and if the plaintiff conceded that fact, the prohibition would issue; but it is conceived that if there was a *bonâ fide* dispute as to the rent or value, the court would decline to interfere at that stage. At the trial the judge must of necessity determine both points for the time, as on them depends the question whether or not he hears the cause on the merits (p). His erroneous decision against the defendant may be reviewed by prohibition (q), or against the plaintiff, by striking out the cause, by rule in the nature of a mandamus (r). The question as to when the decision of the judge upon a question of fact going to jurisdiction is open to review has been already discussed in earlier pages, and to them the reader is referred (s).

*When title is in question.* The decisions upon the first point above referred to will now be considered. To raise a question of title, enough, in conjunction with a yearly rent or value exceeding 20*l.*, to oust the jurisdiction, there must be something more than the mere assertion of the party claiming; the facts or the evidence must show that the title is *bonâ fide* in dispute (t). So where, in an action for rent and double value, the defendant alleged title to the premises in himself, but it was proved that he had before admitted himself to have been tenant to the plaintiff at the times when the rent accrued, and from which the holding over commenced, it was held that the jurisdiction was not ousted (u).

The jurisdiction was held not to be ousted in an action of trespass *qu. cl. fr.* by a claim of the defendant as an inhabitant of B. to enter the plaintiff's land for the purpose of asserting a right of fishing there. Such a custom is bad, and the right claimed under it is not a hereditament within the exception in 9 & 10 Vict. c. 95, s. 58 (v). A custom for the occupiers of wharfs on a navigable river to overlap the adjoining wharfs with their vessels, when being loaded

(o) *Sewell v. Jones*, 1 L. M. & P. 525; 19 L. J. Q. B. 372.

(p) See *per* Patteson, J., *Thompson v. Ingham*, 14 Q. B. 710; 19 L. J. Q. B. 189.

(q) *Ante*, p. 73.

(r) *Ante*, p. 82.

(s) *Ante*, pp. 73, 74.

(t) *Mountnoy v. Collier*, 1 E. &

B. 630; 22 L. J. Q. B. 124;

*Lilley v. Harvey*, 5 D. & L. 648;

17 L. J. Q. B. 357; *Emery v.*

*Barnett*, 4 C. B. N. S. 423; 27

L. J. C. P. 216.

(u) *Wickham v. Lee*, 12 Q. B.

521.

(v) *Lloyd v. Jones*, 6 C. B. 81;

17 L. J. C. P. 206.

or unloaded, does not raise a question of title within the section (*w*). But where the right of a person as the parish clerk of a chapelry to recover the ancient customary yearly sum of 4*l.* from each householder throughout the chapelry was *bonâ fide* disputed, both in respect of the validity of the plaintiff's appointment to the office of clerk, and his right as such clerk to the payment claimed, title to an incorporeal hereditament was held to be in question (*x*); *secus*, in an action for paving rates assessed under the authority of an Act of Parliament (*y*). But where a claim was made against a person for a liability arising from ownership of land, and he disclaimed ownership, title was held to be in question (*z*).

Where, under a local Act, tenants had to pay certain rates towards building a church, and were entitled to deduct one-half from their rent, and a landlord objected to a deduction on the ground that the Act did not apply, and the tenant paid the full rent and rate, and sued his landlord for a moiety in a county court: *Held*, that a question of title did not come in question (*a*).

Where a plaint was for trespass by breaking the doors of rooms of a cottage, and the point in dispute was whether the plaintiff had let the whole house to the defendant, or had reserved for himself the rooms in which the trespass was committed: *Held*, that a question of title came in question (*b*). If a tenant be sued for use and occupation, and rely on the fact that his landlord's title has expired during his tenancy, evidence of such fact will oust the jurisdiction (*c*).

*Yearly rent or value.* The cases referred to under the head of ejectment afford an indication of the manner in which the rent or value will be estimated, and show that the decision of the judge upon the facts as to the rent or value cannot be reviewed by prohibition, but that when based upon an erroneous conception of a matter of law, it may be so (*d*).

*Toll, fair, market, or franchise.* It has been already

(*w*) *Davis v. Walton*, 8 Ex. 153; 22 L. J. Ex. 25.

(*x*) *Stephenson v. Raine*, 2 E. & B. 744; 23 L. J. Q. B. 62.

(*y*) *Baddeley v. Denton*, 4 Ex. 508; 19 L. J. Ex. 44.

(*z*) *Reg. v. Harden*, 2 E. & B. 189; 22 L. J. Q. B. 299.

(*a*) *Gwynne v. Knight*, 1 Ex. 802; 17 L. J. Ex. 168.

(*b*) *Chew v. Holroyd*, 8 Ex. 249; 22 L. J. Ex. 95.

(*c*) *Mountnoy v. Collier*, *supra*.

(*d*) *Brown v. Cocking*, *Elston v. Rose*, *ante*, p. 275; *Crowley v. Vitty*, 7 Ex. 319; 21 L. J. Ex. 135, *post*, p. 287.

stated as the author's opinion, that the county courts have not even now jurisdiction over *any* action in which the title to any toll, fair, market, or franchise comes in question.

In such cases, therefore, the question of yearly rent or value would be immaterial, and the jurisdiction would be ousted on simply showing that such title was in question. A railway company by their special Act were entitled to charge a toll on carriages passing along their line. A coal-owner having requested the company to convey along their line for him some coal-trucks of coal, the company refused, without prepayment for the conveyance of the coal and for bringing back the empty trucks. The coal-owner declined to pay the latter charge beforehand, and sued the company for damages for refusing to carry the coals. On the trial, the plaintiff contended that the company were not entitled to charge the toll beforehand, and also that coal-trucks were not carriages within the meaning of the Act: *Held*, that the title of the company to take toll was not in question, and that the judge had jurisdiction to determine whether the company were justified in making the particular charge, and to say whether a coal-truck fell under a denomination in respect of which toll was payable (e). But when the existence or right to the toll is disputed, it is otherwise. The Ramsgate Harbour Act imposed certain rates and duties on vessels entering or passing the harbour. A vessel having passed the harbour on her outward and also on her homeward voyage, a claim for two payments under the Act was made upon the owner, one in respect of each voyage. He made both payments under protest, and sued for the last in the county court, on the ground that the trustees were not entitled to a second payment: *Held*, that the rates and duties were tolls, and that the title to a toll was in question (f).

PROCEEDINGS. When actions under the provisions of the Act of 1867, not being actions of ejectment, are brought in the county courts, whatever the amount of damages claimed may be, the plaintiff must, at the time of the entry of the plaint, file a concise statement in writing (g), signed by himself or his solicitor, of his cause of action, and of the particulars thereof, together with as many copies as there

(e) *Hunt v. Great Northern Railway Co.*, 20 L. J. Q. B. 349; L. J. Q. B. 3; S. C., *nom. Reg. v. Everett*, 1 E. & B. 273.  
and see 10 C. B. 900.

(f) *Adey v. Trinity House*, 22

(g) Form 181.

are defendants, and one for the judge. A copy of the statement, sealed with the seal of the court, must be annexed to the summons, and the statement will be deemed part of the summons (*h*).

*Injunction in action involving title to easement.* Where in any action the right or title to any easement shall come in question, and the right or title to such easement shall be proved to the satisfaction of the judge, the judge may, in addition to giving judgment for the successful party for his damages and costs, or for costs, as the case may be, make an order in the nature of an injunction requiring the party interrupting or obstructing the user of such easement to permit the other party to use and enjoy such easement free from interruption (*i*).

*Jury.* Either party may require a jury; and the action will then be tried in the same manner as other actions tried by juries (*j*).

*Removal into high court.* The provisions for the removal of actions of ejectment in certain cases into the high court (*k*), for some unapparent reason, form part of the clause of the Act of 1867, by which jurisdiction is given to the county courts to entertain actions in which title comes in question (*l*); but although, from being joined to that section, it might be supposed that the same provisions apply both to actions in which title is in question, not being actions of ejectment, and to actions of ejectment, it appears clear from the wording of the proviso that they extend only to actions of ejectment under section 11.

*Appeal.* An appeal is allowed in these cases on the same grounds, and subject to the same conditions, as have been already mentioned in chap. vi. (*m*); but it is conceived that the appeal lies in all cases as of right, irrespective of the amount claimed (*n*). The consent to allow the judge to decide upon a question of title incidentally arising does not prejudice the right of appeal; and the judgment in such action where the consent is given is not evidence of title between the parties or their privies in any other action in the same or any other court (*o*); but the parties may expressly renounce the right of appeal (*p*).

(*h*) Order vii., rule 6; order ii., rule 7; order xxxvii., rule 31.

(*i*) Order xviii., rule 12.

(*j*) Order xvi., rule 3.

(*k*) *Ante*, p. 276.

(*l*) 30 & 31 Vict. c. 142, s. 12.

(*m*) *Ibid.*, s. 13.

(*n*) *Ante*, p. 201.

(*o*) 19 & 20 Vict. c. 108, s. 25.

(*p*) *Ante*, p. 198.

*Costs.* Prior to the Act of 1867 it was held that a judge had no power to give costs to the defendant where a cause was struck out for want of jurisdiction (*q*); but now, unless the parties consent to the court having jurisdiction, the judge has power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction, and the plaintiff had not appeared, or had appeared and failed to prove his demand (*r*).

See, as to scales of costs, *ante*, p. 191.

### PART III. RECOVERY OF SMALL TENEMENTS.

The jurisdiction of the county courts in proceedings for the recovery of small tenements is of a twofold character. It extends to cases where a tenant holds over after the legal determination of his tenancy; and also to those cases where a landlord has by law a right to re-enter and obtain possession on the ground of non-payment of rent.

Generally speaking, the practice in these cases is similar to the ordinary practice. The essential points of difference will be gathered from the following pages (*s*).

1. ON DETERMINATION OF TENANCY. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises, nor the rent payable in respect of them, exceeds 50*l.* by the year, and upon which no fine or premium has been paid, has expired, or has been determined, either by the landlord or the tenant, by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, neglects or refuses to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant, or against such person so neglecting or refusing, in the county court of the district in which the premises lie, for the recovery of the same. A summons will then be issued in the ordinary way (*t*).

The fact of the pendency of an action of ejectment is not a bar to the plaintiff's proceeding in the county court under this section (*u*).

(*q*) See *Lawford v. Partridge*, 26 L. J. Ex. 147; 1 H. & N. 621.

(*r*) 30 & 31 Vict. c. 142, s. 14.

(*s*) It has been shown, *ante*, p. 279, that proceedings in ejectment may not be taken if a remedy

can be obtained under these provisions.

(*t*) 19 & 20 Vict. c. 108, s. 50, form 149.

(*u*) *Williamson v. Bissil*, 31 L. J. Ex. 181; 7 H. & N. 391; 10 W. R. 109. See *ante*, p. 184.



The foregoing section is a re-enactment of section 122 of the 9 & 10 Vict. c. 95, amended so as to exclude the jurisdiction of the county courts where the yearly *value* of the premises sought to be recovered exceeds 50*l.* (v). The decisions under the old Act are, however, generally applicable to the section now under consideration.

*Landlord and tenant.* It has been held that the jurisdiction is not available, except where there is the ordinary relation of landlord and tenant; and therefore a mortgagee cannot recover possession from a person who has entered into the occupation subsequently to the mortgage, and who has not become tenant to the mortgagee (w); nor can a person who is the legal owner of the premises, and who claims to be the landlord, where the occupier is in possession under an agreement for purchase, the relation between the parties not being the ordinary relation of landlord and tenant (x). In 1857 a defendant was entitled to 500*l.*, with interest, charged on Whiteacre, which belonged to A; and it was orally agreed that the defendant should rent Blackacre from A, and should deduct the interest on the 500*l.* from the rent. In 1858 A conveyed the reversion of Blackacre to the plaintiff: *Held*, that the defendant was a mere tenant of Blackacre, and that the plaintiff could determine the tenancy by notice, and recover possession (y).

*Rent or value.* Where a defendant entered into a written agreement with the plaintiff to take certain premises at a rent of 20*s.* a week, payable on demand, and subject to four weeks' notice to quit on either side; and during the continuance of this tenancy an oral agreement was made between the parties that the rent should be 16*s.* a week, and the defendant for several weeks paid this reduced amount, and on one occasion submitted to a distress: *Held*, that there was no fresh demise, and that the original rent continued to be the rent payable for the premises, and therefore exceeded the limit of the jurisdiction (z).

*Due determination of tenancy.* The question whether the

(v) See *Fearon v. Norval* (2), 18 L. J. Q. B. 9; *Harrington v. Ramsay*, 2 E. & B. 669; 22 L. J. Q. B. 460.

(w) *Jones v. Owen*, 18 L. J. Q. B. 8; 5 D. & L. 669.

(x) *Banks v. Rebbeck*, 20 L. J. Q. B. 476; 2 L. M. & P. 453.

(y) *Jones v. Thomas*, 4 L. T. N. S. 210.

(z) *Crowley v. Vitty*, 7 Ex. 319; 21 L. J. Ex. 135; and see *Brown v. Cocking*, and *Elston v. Rose*, cited *ante*, p. 275.

tenancy has been "duly determined by legal notice to quit" is one upon which the decision of the county court judge is conclusive between the parties (*a*).

*Mesne profits.* In the plaint under the above section, the plaintiff may also add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed 50*l.*; and any misdescription in the nature of such claim may be amended at the trial (*b*). An order for the giving up of possession of premises under section 50 is not conclusive evidence of title in a subsequent action for mesne profits (*c*).

*Proceedings after summons.* If the defendant shall not, at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith, or on or before such day as the judge shall think fit to name (*d*). If the order be not obeyed, the registrar, whether service of the order can be proved or not, must at the instance of the plaintiff issue a warrant (*e*) authorising and requiring the high bailiff to give possession of the premises to the plaintiff (*f*).

*Showing cause.* The fact of the tenant appearing to the summons and showing cause does not oust the jurisdiction of the court to grant a warrant of possession: it is for the court to determine whether the cause shown is sufficient or not (*g*).

*Warrant.* The warrant of possession cannot be issued or executed when the lands are situated without the juris-

(*a*) *Fearon v. Norval* (1), 17 L. J. Q. B. 161.

(*b*) 19 & 20 Vict. c. 108, s. 51.

(*c*) *Campbell v. Loader*, 3 H. & C. 520; 34 L. J. Ex. 50; 13 W. R. 348; and see *Hodson v. Walker*, *post*.

(*d*) Form 151.

(*e*) Form 152.

(*f*) 19 & 20 Vict. c. 108, s. 50.

(*g*) *Fearon v. Norval* (1), 17 L. J. Q. B. 161; and see *per Pattenon, J.*, 18 L. J. Q. B. 10.

diction of the court, although both parties reside within it (*h*). The order of possession does not affect the rights of third persons, so trespass may be maintained against the person obtaining the warrant of possession, and on whose behalf it is executed, by one whose rights are injuriously affected thereby: *quære*, whether the rights of the person against whom the order is obtained are affected thereby (*i*).

*Where title is in question.* Prior to the statute of 1867, as has been explained in the preceding part of this chapter, the county courts had no jurisdiction to try any action in which the title to corporeal and incorporeal hereditaments came in question, except under the provisions already specified, by consent of the parties. The question frequently arose, therefore, in proceedings for the recovery of tenements, whether title was or was not in question, and if it proved to be in question the jurisdiction was ousted. The remarks already made (*ante*, p. 280) in reference to questions of title, are equally applicable to the provisions now under consideration. And though the county courts have now a limited jurisdiction where questions of title arise, yet as the limit is at 20*l.* a year instead of 50*l.*, it will often be material to know whether a proceeding instituted for the recovery of a tenement, where the yearly rent or value exceeds 20*l.*, may be defeated by a question of title being raised (*j*).

Where the defendant sets up as a defence that he has given up possession to a third party, who made a *bonâ fide* claim, the judge ought not to refuse to hear the case on the ground that title is in question, until he has ascertained and decided that the defendant gave up possession by compulsion; because if he gave it up voluntarily he would be estopped from setting up the third person's title against his landlord's, and the court would have jurisdiction (*k*). If the alleged tenant makes a *bonâ fide* claim of ownership, or alleges title in a third person (*l*), title is in question (*m*). On application for a prohibition by B, it appeared that B held, as tenant to C in his lifetime, two farms, C being leaseholder of the one and tenant in fee of

(*h*) *Ellis v. Peachey*, 18 L. J. Q. B. 137; 5 D. & L. 675. L. J. C. P. 216; 4 C. B. N. S. 423.

(*i*) *Hodson v. Walker*, L. R. 7 Ex. 55; 42 L. J. Ex. 51; 25 821. (*l*) *Marwood v. Waters*, 13 C. B.

L. T. N. S. 937; 20 W. R. 489. (*m*) *Pearson v. Glazebrook*, L. R. 3 Ex. 27; 37 L. J. Ex. 15; 17

(*j*) See p. 281, note (*j*). L. T. N. S. 260. See, as to rent and value, *ante*, pp. 283, 287.

(*k*) *Emery v. Barnett*, 27

the other. C died and A produced a will by which he was devisee of all C's real estate, and appointed executor. A proved the will and gave B notice to quit. B *bonâ fide* disputed the validity of the will: *Held*, that title to the leasehold did not come in question, as probate of the will was conclusive as to title of A; but that title to the freehold did come in question, and a prohibition was granted as to it (*n*).

2. FOR NON-PAYMENT OF RENT. If the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect of them exceeds 50*l.* a year, is one half-year in arrear, and the landlord has by law a right to re-enter for the non-payment, he may, without any formal demand or re-entry, enter a plaint in the county court, and a summons (*o*) will issue to the tenant. Service of such summons will stand in lieu of a demand and re-entry.

If the tenant, five clear (*p*) days before the return-day, pays into court all the rent in arrear, and the costs, the action will cease, but if he does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons, if the defendant does not appear—the judge may order (*q*) that possession of the premises mentioned in the plaint shall be given by the defendant to the plaintiff, on or before such day, not being less than four weeks from the trial, as the judge may name, unless within that period all the rent in arrear and the costs be paid into court (*r*).

*Enforcing order.* If such last order be not obeyed, and the rent and costs be not so paid, the registrar, whether service of the order can be proved or not, will, at the instance of the plaintiff, issue a warrant (*s*) authorising

(*n*) *Kerkin v. Kerkin*, 3 E. & B. 399.

(*o*) Form 150.

(*p*) *Ante*, p. 218.

(*q*) Form 151.

(*r*) 19 & 20 Vict. c. 108, s. 52.

See the decisions under sect. 50, *ante*, p. 287.

(*s*) Form 152.

and requiring the high bailiff to give possession of the premises to the plaintiff. The plaintiff will, from the time of the execution of such warrant, hold the premises discharged from the tenancy; and the defendant, and all persons claiming by, through, or under him, will, so long as the order remains unreversed, be barred from all relief in equity or otherwise (*t*).

PROCEEDINGS COMMON TO BOTH.—*Plaint.* The plaint must be entered in the court of the district in which the premises are situate (*t*).

*Service of summons.* The summons may be served in the same manner as other summonses; but if the defendant cannot be found, and his dwelling is unknown, or admission cannot be obtained for service, a copy of the summons may be posted on some conspicuous part of the premises sought to be recovered; and such service will be good (*u*).

*Sub-tenants.* If a summons is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, the sub-tenant being an occupier of the whole or a part of the premises sought to be recovered, he must forthwith give notice of it to his immediate landlord; and such landlord, on the receipt of the notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question. If the sub-tenant omits to give such notice to his immediate landlord, he is liable to the penalty of forfeiting three years' rack-rent of the premises held by him to such landlord. The penalty must be recovered by action in the court from which the summons was issued (*v*).

*Warrants.* Every warrant to a high bailiff to give possession of a tenement will, on whatever day it may be issued, bear the date of the day next after the last day named by the judge in his order for the delivery of possession of the premises in question. It will continue in force for three months from such date, and no longer. No order for delivery of possession need be drawn up or served (*w*).

The warrant will justify the bailiff named in it in entering upon the premises named in it, with such assistants as he may deem necessary, and in giving possession accordingly. But no entry may be made on any such warrant, except

(*t*) 19 & 20 Vict. c. 108, ss. 50,  
52.

(*u*) 19 & 20 Vict. c. 108, s. 54.

(*v*) 19 & 20 Vict. c. 108, s. 53.  
See *ante*, p. 11.

(*w*) *Ibid.*, s. 56, form 152.

between the hours of nine in the morning and four in the afternoon (x).

*Appeal.* In all actions where the yearly rent or value of the premises exceeds 20*l.*, an appeal lies as of right, and in other cases by leave of the judge, in the manner already described in chap. vi. (y).

*Officers not liable for proceedings under warrant.* No action or prosecution may be brought against the judge, or against the registrar by whom any warrant was issued under the foregoing provisions, or against any bailiff or other person by whom the warrant was executed or the summons affixed, for issuing, or executing such warrant, or affixing such summons, on the ground that the person by whom the same was sued out had not lawful right to the possession of the premises (z).

*Landlord with lawful title not a trespasser.* If the landlord at the time of applying for a warrant had lawful right to the possession of the premises, or of the part held over, neither the landlord nor his agent, nor any other person acting in his behalf, will be deemed a trespasser merely on the ground of any irregularity or informality in the mode of proceeding for obtaining possession. The party aggrieved may, however, bring an action on the case for such irregularity or informality; and the damage alleged to be sustained must be specially laid. He may then recover full satisfaction for such special damage, with costs of suit. But if the special damage so laid be not proved, the defendant will be entitled to a verdict. And if proved, but assessed by the jury at not more than five shillings, the plaintiff may recover no more costs than damages, unless the judge before whom the trial takes place certifies that in his opinion full costs ought to be allowed (a).

(x) 19 & 20 Vict. c. 108, s. 55.

(z) 9 & 10 Vict. c. 95, s. 124.

(y) *Ibid.*, s. 68; 30 & 31 Vict.  
c. 142, s. 13.

(a) *Ibid.*, s. 125.

## CHAPTER XIV.

### EQUITY ACTIONS.

#### PART I. JURISDICTION AND TRANSFER TO HIGH COURT.

It has been already more than once stated in these pages (*a*) that the effect of the Judicature Act is to compel the court to administer both law and equity in every action, the rule in equity prevailing where law and equity conflict. Hence the court having once got seisin of a common law plaint within its jurisdiction, must, subject to the rules of practice, give effect to every defence, whether legal or equitable, enabling a defendant to defeat the claim, entirely irrespective of any Act, except the Judicature Act, concerning its jurisdiction (*b*). When, however, a plaintiff seeks to commence an action such as was formerly within the cognisance of the Court of Chancery only, or if a defendant wishes to set up any such matter by way of counter claim, the statutes conferring an equity jurisdiction on the county courts must be consulted. If they give the jurisdiction, the action may be safely proceeded with; if not, it ought not to be commenced in a county court, unless the parties consent to give the court jurisdiction. Even then it is not quite clear in what way the consent is to be evidenced (*c*). By the 28 & 29 Vict. c. 99, s. 9, a judge of the high court appears to have power to make an order, without consent, that an action actually in progress beyond the jurisdiction shall remain in the county court (*d*). In regard to a counter claim not within the jurisdiction, the court must give effect to it to

(*a*) *Ante*, pp. 2, 5, 142, 148.

(*b*) 36 & 37 Vict. c. 66, ss. 89,

90.

(*c*) See *ante*, p. 17, as to common law actions.

(*d*) See *post*, p. 299.



the extent only of the jurisdiction possessed by the court (*e*). And upon this a question will arise as to what the effect of such a judgment upon a counter claim beyond the jurisdiction of the court will be—*i.e.*, whether it leaves the defendant in a position to enforce the residue of his claim or not.

The new rules of practice have entirely assimilated the practice in common law and equity actions, except in the particular cases hereafter mentioned. Many of the provisions of the new code are, however, inapplicable to any but equity actions, except where, by the administration of law and equity in one action, a decree similar to that which would have been formerly made in equity is pronounced—*e.g.*, a decree for administration. Hence it has been thought convenient to collect in the present chapter the provisions relative to the administrative powers of the courts.

The county courts have all the power and authority of the high court in the following actions and matters:—

1. *In all actions by creditors, legatees* (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal, or real, or personal and real estate against or for an account or administration of which the demand may be made, does not exceed in amount or value the sum of 500*l.* (*f*). Although the preceding words may be read as if they conferred upon the county courts in matters not exceeding 500*l.* in amount or value, the general equity jurisdiction in matters of account which the high court possesses, yet it is beyond all doubt that the correct interpretation of the words is to restrict the jurisdiction given to the county courts to those accounts only which relate to the estates of deceased persons. The assignees and representatives of the various classes of persons above enumerated have the same power to institute proceedings under it as the various classes themselves have (*g*). An administration suit must be brought in the county court within the district of which the deceased person had his last place of abode in England, or in which the executors

(*e*) 36 & 37 Vict. c. 66, s. 90.

(*f*) 28 & 29 Vict. c. 99, s. 1. See, as to the common law jurisdiction where a legacy or share of intestate's estate does not exceed 50*l.*, chap. xv.

(*g*) *Turner v. Rennoldson*, L. R. 16 Eq. 37; 42 L. J. Ch. 510; 21

W. R. 558; 28 L. T. N. S. 330, and compare the Chancery Improvement Act, 15 & 16 Vict. c. 86, s. 45, where similar words are used.—*Vide* Morgan, Chancery Acts and Orders, 4th edit., p. 203.

or administrators, or any one of them, have or has their or his place of abode (*h*).

2. *In all actions for the execution of trusts (i)*, in which the trust estate or fund does not exceed in amount or value 500*l.* (*j*). A suit for this purpose must be brought in the county court within the district of which the defendants, or any or either of them, reside or carry on business (*k*).

3. *In all actions for foreclosure or redemption, or for enforcing any mortgage, charge, or lien, where the mortgage, charge, or lien does not exceed in amount 500*l.* (l).* A suit by parties claiming through a mortgagor to set aside a sale made by a mortgagee, is an action for redemption within the meaning of this clause (*m*). These suits must be brought in the county court within the district of which the lands, tenements, or hereditaments subject to the mortgage, charge, or lien are situate (*n*).

4. *In all actions for specific performance, or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where, in the case of a sale or purchase, the purchase-money, or, in the case of a lease, the value of the property, does not exceed 500*l.* (o).* Proceedings in these suits must be taken in the county court within the district of which the defendants, or any one of them, reside or resides, or carry on or carries on business (*p*).

5. *In all proceedings under the Trustees' Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates does not exceed in amount or value 500*l.* (q).* These proceedings must be taken in the county court within the district of which the persons making the application or any of them reside or resides (*r*).

Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of the 10 & 11 Vict. c. 96, "for better securing trust funds, and for the

(*h*) 28 & 29 Vict. c. 99, s. 10.

(*i*) This section includes constructive trusts: *Clayton v. Rentson*, L. R. 4 Eq. 158; 36 L. J. Ch. 428; 16 L. T. N. S. 48.

(*j*) 28 & 29 Vict. c. 99, s. 1.

(*k*) *Ibid.*, s. 10.

(*l*) *Ibid.*, s. 1.

(*m*) *Powell v. Roberts*, 18 W. R.

84; L. R. 9 Eq. 169; 39 L. J. Ch. 44; 21 L. T. N. S. 451.

(*n*) 28 & 29 Vict. c. 99, s. 10.

(*o*) 30 & 31 Vict. c. 142, s. 9. See *Wilcox v. Marshall*, L. R. 3 Eq. 270; 15 L. T. N. S. 527.

(*p*) 28 & 29 Vict. c. 99, s. 10.

(*q*) *Ibid.*, s. 1.

(*r*) *Ibid.*, s. 10.

relief of trustees," where the same do not exceed in amount or value 500*l.*, may, in the case of money, be paid into a post-office savings bank established in the town where the county court of the district in which the trustees or other persons or any of them reside is held, in the name of the registrar of the county court, in trust to attend the orders of the court. In the case of stocks or securities, they may be transferred or deposited into or in the names of the treasurer and registrar of the court, in trust to attend the orders of the court (*s*).

For the purposes of the above section of the Act of 1867, all the powers given to the Court of Chancery by the "Act for the further relief of trustees" (*t*) are extended to county courts, and the orders of such courts are made a sufficient indemnity to persons acting in pursuance of them (*u*).

6. *In all proceedings relating to the maintenance or advancement of infants*, in which the property of the infant does not exceed in amount or value 500*l.* (*v*). Proceedings of this nature must be taken in the county court within the district of which the defendant or defendants (that is presumably here the person or persons upon whom a petition of this kind must be served) resides or reside, or carries on, or carry on business (*w*).

7. *In all actions for the dissolution or winding-up of any partnership*, when the whole property, stock, and credits of such partnership do not exceed in amount or value 500*l.* (*v*). Suits of this nature must be brought in the county court within the district of which the partnership business was or is carried on (*w*).

8. *In all actions for partition*, where the property to which the suit relates does not exceed in value 500*l.* (*x*). It is not directly laid down in what county court suits for partition should be instituted, and by analogy to proceedings in other cases it might be presumed they should be instituted in the county court within the district of which the lands or tenements to which the suit refers are situate; but having regard to sub-section 6 of section 10 of the Act of 1867, the better opinion seems to be that suits for partition should be instituted in the county court within the district of which the defendants or any of them reside

(*s*) 30 & 31 Vict. c. 142, s. 24.  
See further, *post*.

(*t*) 12 & 13 Vict. c. 74.

(*u*) 30 & 31 Vict. c. 142, s. 25.

(*v*) 28 & 29 Vict. c. 99, s. 1.

(*w*) *Ibid.*, s. 10. See, as to the common law jurisdiction over claims under partnerships not exceeding 50*l.*, chap. xv.

(*x*) 31 & 32 Vict. c. 40, s. 12.

or carry on business (y). A plaint for the sale of property under the Partition Act should pray for a partition also (z).

9. *In all proceedings for orders in the nature of injunctions*, where the same are requisite for granting relief in any matter in which jurisdiction is given “by the County Courts (Equitable Jurisdiction) Act, 1865,” to the county courts, or for stay of proceedings in actions to recover any debt provable under a decree for the administration of an estate made by the court to which the application for the order to stay proceedings is made (a).

*Jurisdiction concurrent, not exclusive—Costs.* The above jurisdiction is, like the general jurisdiction over common law actions, concurrent with, and not exclusive of, that of the high court. The high court has power, by deprivation of costs, to punish a plaintiff who invokes the more expensive machinery of the high court, instead of that of the county court, in matters within its jurisdiction; but the practice hitherto prevailing has not been uniform, and no clear rule as to the allowance of costs in such cases can be laid down (b).

### TRANSFER OF ACTIONS.

1. *From a county court to the high court.* The provisions as to the transfer of actions to the high court, when, by reason of the administration of law and equity in one suit the jurisdiction is exceeded (c), have been explained in the earlier pages, such provisions being applicable to all actions alike (d).

An action commenced in a county court may be transferred to the high court by any judge of the high court, on the *ex parte* application, at chambers, of any party to the suit, or after hearing a summons served upon the other

(y) See 28 & 29 Vict. c. 99, s. 10; 30 & 31 Vict. c. 142, s. 1; and see *dictum* of James, V.C. (now L.J.), in *Baker v. Wait*, L. R. 9 Eq. 103; 39 L. J. Ch. 204; 21 L. T. N. S. 632. A joint tenant or a tenant in common in reversion cannot maintain a suit for partition: *Evans v. Bagshaw*, L. R. 5 Ch. 340. A number of cases on points in partition suits will be found collected in 15 S. J. 174.

(z) *Holland v. Holland*, L. R. 13 Eq. 406.

(a) 28 & 29 Vict. c. 99, s. 1.

(b) *Scotto v. Heritage*, L. R. 3 Eq. 212; 15 W. R. 168; 15 L. T. N. S. 349; *Grandin v. Haines*, W. N. 1873, 12; *Brown v. Rye*, L. R. 17 Eq. 343; 29 L. T. N. S. 872; *Simons v. M'Adam*, L. R. 6 Eq. 324; 18 L. T. N. S. 678.

(c) 36 & 37 Vict. c. 66, s. 90.

(d) *Ante*, p. 136.

party or parties, upon such terms, if any, as to security for costs or otherwise, as the judge may think fit (*e*). The latter of these provisions is equivalent to a *certiorari* at law.

Where any order is made by the high court, or any division or judge, for the transfer of any proceeding from the county court to the high court, under the 90th section of the Judicature Act, 1873, or under section 3 of the County Courts Act, 1865, then, subject to such order, the record in such proceeding shall be transmitted by the registrar in the following manner: The registrar shall make and certify under his hand office copies of all entries of record in the books of the court, and shall forthwith transmit by post or otherwise such copies, together with all such documents as shall have been filed in the action, to the proper officer of the high court. Such copies and the cost of transmission shall be paid for by the party on whose application the transfer has been made; and the registrar may require deposit of the costs of making such copies and transmission before making or transmitting the same (*f*).

2. *From the Court of Chancery to a county court.* The proceedings in relation to the transfer of equity actions from the high court to a county court, pursuant to the 30 & 31 Vict. c. 142, s. 8, and extended to all actions in the high court, in which any relief is sought which can be obtained in a county court, by the 36 & 37 Vict. c. 66, s. 67, have been already noticed, and the questions arising under them considered (*g*).

3. *From one county court to another county court.* If during the progress of any suit or matter, it shall appear to the court that the same could be more conveniently prosecuted in some other county court, the court may transfer the same to such other county court, and thereupon the suit or matter will proceed in such other county court (*h*).

Where actions are commenced in different courts by parties in the same interest, they must be transferred to the court in which the first plaint was entered, and the proceedings will then continue as if they had been commenced in that court (*i*).

(*e*) 28 & 29 Vict. c. 99, s. 3;

(*f*) Order xx., rule 7.

*Baker v. Wait*, L. R. 9 Eq. 103;

(*g*) *Ante*, p. 261. See *Picard*

39 L. J. Ch. 204; 21 L. T. N. S. 632.

*v. Hine*, 18 L. T. N. S. 704.

(*h*) 28 & 29 Vict. c. 99, s. 11.

(*i*) Order xxxvii., rule 17.

4. *When the subject-matter of the suit exceeds the limit of the jurisdiction of the county courts.* If, during the progress of any suit or matter, it appears to the court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the county courts is limited, it will not affect the validity of any decree or order then made, but it will be the duty of the court to direct that the said suit or matter be transferred to the high court (*j*), and the suit or matter will thereupon proceed as an ordinary suit in the high court (*k*).

Where it appears from the evidence at the hearing that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the county courts is limited, the judge should order such suit to be transferred to the high court, and he ought not to dismiss the suit for want of jurisdiction to entertain it. But this latter course should be adopted where the fact of want of jurisdiction appears upon the plaint itself (*l*). When a county court judge has ordered a transfer under this section, his jurisdiction is gone and he has no power to make any order as to costs (*m*).

The next two rules have been prescribed under this section:—

If, during the progress of any action upon any claim or title, or to obtain any relief, remedy, or redress which might respectively before November 1, 1875, have been the subject of a plaint or petition in equity, it shall be made to appear that the subject-matter of the plaintiff's claim exceeds the amount to which the jurisdiction of the court is limited, the judge, if requested, may forthwith make an order for the transfer of the action to the Chancery division of the High Court of Justice; but if not so requested, the order shall not be made before fifteen days at least. And the registrar shall make and file a copy of such order, and shall transmit the order, by post or otherwise, to the proper officer of the Chancery division of the High Court of Justice, and shall also send notice, by post or otherwise, of the fact to all parties and persons entitled to be served with a copy of the order (*n*).

*Transfer to high court where, upon taking of accounts,*

(*j*) Form 218.

(*k*) 28 & 29 Vict. c. 99, s. 9.

(*l*) *Birks v. Silverwood*, L. R. 14 Eq. 101; 27 L. T. N. S. 18; *Thomson v. Flin*, L. R. 17 Eq. 415; 29 L. T. N. S. 829.

(*m*) *Hares v. Lea*, L. R.

10 Eq. 683; 22 L. T. N. S. 715.

(*n*) Order xx., rule 5, form 12; Appendix F.

*amount of jurisdiction of county court is found to be exceeded.* If, during the progress of taking any accounts or making any inquiries in any action for any claim, right, redress, or remedy, which might, before the commencement of the Supreme Court of Judicature Act, 1873, have been enforced in equity, it shall appear to the registrar that the subject-matter of the action exceeds the amount to which the jurisdiction of the court is limited, he may, if he thinks fit, proceed with and complete the particular account or inquiry; but he shall, at the next sitting of the court, present a certificate of the state of the proceedings in the action, and if the judge shall be of opinion that such excess exists, he shall make an order of transfer as under the above rule (o).

If any of the parties to the suit or matter wish it to be carried on in the county court in which it originated, they may make an application to that effect to a judge of the high court in chambers; and he may, if he thinks fit, summon the other parties to the suit, or any of them, to appear before him; and after hearing them, or in default of their appearance, he may make an order authorising and directing such suit or matter to be carried on or prosecuted in the county court (p). These powers give the judge of the high court entire discretion to extend the jurisdiction to the action in question, irrespective of the statutory limitations.

## PART II. PROCEEDINGS BY ACTION.

*Plaint and summons.* Except in the cases which will be found noticed in the next division of this chapter, it appears that all proceedings in equity must be commenced by plaint (q). The general rules as to the entry of the plaint and issue of the summons apply. The statement of the plaintiff should concisely state the facts upon which the plaintiff relies, as entitling him to the relief for which he asks, and should, it is conceived, state specifically the grounds of the relief prayed for. In all cases of ordinary account, such as partnership, executorship, or ordinary trust accounts, where the plaintiff in the first instance desires to have an account taken, the particulars must contain a claim that such account be taken (r).

(o) Order xx., rule 6.

(q) Order iv., rule 1; 30 & 31

(p) 28 & 29 Vict. c. 99, s. 9.

Vict. c. 142, s. 27.

(r) Order vii., rule 2.



And it is conceived that if an injunction be asked for on any ground whatever, it should be stated in the plaintiff's statement that the injunction will be asked for.

Examples of the plaintiff's statements will be found in Appendix E (s). A plaint for administration, formerly, need not contain a specific statement that the estate administered does not exceed in amount or value 500*l.* (t).

*Defence.* The defendant is not compelled to put in a statement of defence, but in certain cases (v) he is bound to give notice of the special defences on which he intends to rely. In all cases where the defence consists of more than a simple denial of the plaintiff's case it is conceived that a defendant ought always to put in a statement of defence; and if he fails to do so, the fact will be taken into consideration by the judge in dealing with the costs (v).

*Evidence.* Except in the cases which are particularly mentioned—*e.g.*, in matters commenced by petition (w), and the other cases in which affidavits may be used (x), evidence must be given *vivâ voce* on oath. The provisions as to examination of witnesses *de bene esse*, and where out of the jurisdiction, and as to evidence generally, have already been explained (y).

*Practice generally.* The practice in regard to both common law and equity has now been assimilated by the rules of practice. In some cases, however, the statutory enactments controlling the county court equity jurisdiction present some difficulties in the way of placing the two systems under an entirely identical practice. The County Courts' Acts are construed as one Act; but even reading them as one Act, different provisions having a similar object will be found applying to common law and equity actions. Hence, notwithstanding the provisions of the Judicature Act as to the construction of statutes (z), it is conceived that in cases where there is a special provision in any particular matter for a common law action, and also for an equity action, even though the object be the same, the provisions of the one cannot be applied to the other, though they may be when there are no special provisions applicable to the other. Hence it is conceived that, for

(s) Form 46 a.

(t) *Cheesewright v. Thorn*, 38

L. J. Ch. 615.

(u) *Ante*, p. 140.(v) *Ante*, p. 139. See form 199.(w) *Post*, p. 311.(x) *Ante*, pp. 159, 180.(y) *Ante*, p. 150.(z) *Ante*, p. 2.

example, a *certiorari* will not issue to remove an equity action to the high court, as a power of transfer to the high court is specially provided for equity cases (*a*), and that the same rule must be applied in all cases of conflicting practice.

The trial will proceed in precisely the same manner as other trials, and the same rules of evidence will apply.

**JUDGMENT AND ORDER.** Where a defendant desires to have the judgment or order of the court upon any question between himself and any person other than the plaintiff, he must ten days before the return-day give notice in writing to the person against whom, or as to whom he desires such judgment or order, that he will at the time of the trial apply to the court for such judgment or order, and must set forth in such notice the substance of the judgment or order for which he so intends to apply (*b*). All judgments for payment of debts, damages, or costs, are entered by the registrar in the minute-book; but all special judgments or orders in the nature of decrees must be settled by the registrar, and must be sealed with the seal of the court and filed of record, and a minute of such filing, with the date thereof, must be entered in the minute-book (*c*). The judgments or orders in equity actions will generally be of the special character above referred to (*d*). In relation to them the following rules are applicable. The provisions as to the appointment and duties of a receiver have already been mentioned (*e*).

*Real property.* Where any real property is ordered to be sold, the order must direct who is to have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, are to be prepared. If any conditions or contracts are ordered to be settled by a conveyancing counsel, such counsel must be named in the order (*f*). Leaseholds should probably be treated as real estate.

*Personal property,* when ordered to be sold, must be sold by public auction, under the superintendence of the high bailiff, unless the court otherwise orders (*g*). If ordered to be sold by private contract, he must carry out the directions of the court as to the sale (*h*).

(*a*) *Ante*, p. 297.

(*b*) Order xviii., rule 38.

(*c*) *Ibid.*, rule 1, *ante*, p. 185.

(*d*) For form of heading and conclusion of judgments and orders, see form 2; and for forms

of orders, see forms 200—207, 219.

(*e*) *Ante*, p. 167.

(*f*) Order xviii., rule 14.

(*g*) *Ibid.*, rule 15, form 201.

(*h*) Order ii., rule 32.

*Deeds.* Where the order directs the preparation and execution of a deed, it must state by what party the deed is to be prepared, and to whom it is to be submitted for approval. If the parties cannot agree upon the form of it, the judge may, on the application of either party, settle it himself, or name a conveyancing counsel by whom it may be settled, subject to the final approval of the judge (*i*).

*Accounts or inquiries.* Where any order directs any account or inquiry to be taken or made, the account or inquiry must be taken or made by the registrar. For this purpose he has all the powers which a chief clerk of the Master of the Rolls or a vice-chancellor of the Court of Chancery had before November 1, 1875; and all parties will have the same power of summoning witnesses, including as witnesses any parties in the cause, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they would have on the trial of an action; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the trial, will be applicable as far as may be (*j*).

In taking accounts, books of account in which the accounts have been kept, will, unless the judge otherwise orders, be taken as *prima facie* evidence of the truth of the matters contained in them, with liberty to the parties interested to take such objections as they may be advised (*k*).

Where the registrar is ordered to make inquiries or to take accounts, he shall by summons (*l*), and returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, direct such parties to attend at his office or at the court, for the purpose of proceeding with such inquiries or accounts. In all cases in which advertisements are ordered, the return-day shall not be less than twenty-one days; and the registrar shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of such sitting, and shall insert the same fourteen days previous to such sitting (*m*). Upon the day so appointed, or at any adjourned sitting, the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or solicitors (*n*).

Every advertisement for creditors or persons having any

(*i*) Order xviii., rule 13.

(*j*) *Ibid.*, rule 16.

(*k*) *Ibid.*, rule 19.

(*l*) Form 12 or 209.

(*m*) Order xviii., rule 17.

(*n*) *Ibid.*, rule 18.

claim upon or interest in the distribution of any assets to be administered, must direct every such creditor or other person to send, in a limited time, to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing the advertisement, a time must be fixed for adjudicating on the claims (*o*). No creditor or other person need make any affidavit or attend in support of his claim unless served with notice to do so (*p*).

Every creditor must produce or transmit to the registrar, at the time fixed for adjudication, any security held by him, and if required, by notice in writing from the registrar, he must also produce or transmit all other deeds and documents necessary to substantiate his claim, at such time as may be named (*q*). Every person claiming as heir-at-law, devisee, next of kin, or legatee, must, if required, by notice in writing from the registrar, produce or transmit any pedigree or proof mentioned in the notice, within such time as may be named (*r*). Persons refusing to comply with the two preceding rules will not be allowed their costs of proof, unless the registrar otherwise directs (*s*).

At the time appointed, the registrar must take the evidence of the executor, administrator, or other accounting party, upon the debts or claims, and in his discretion allow them without further proof. He may direct an investigation of those not allowed, and require such further particulars, information, or evidence relating to them as he thinks fit, and may require any creditor or other person to attend and prove his claim, or any part of it. The adjudication on the claims not allowed must be adjourned to a time to be fixed (*t*). Notice of allowance must be given by the registrar to those whose claims are allowed, and also to those whose claims or any part are not allowed, to attend and prove their claims, or such part as is not allowed, by a time named, not less than seven days from the date of the notice (*u*); and to attend on the day to which the adjudication has been adjourned. The claims of persons not complying with the notice, or such parts of their claims as aforesaid, will be disallowed (*v*).

A person who has not before sent in particulars of his claim, pursuant to the advertisement, may do so two days

(*o*) Order xviii., rule 20.

(*p*) *Ibid.*, rule 21.

(*q*) *Ibid.*, rule 22.

(*r*) *Ibid.*, rule 23.

(*s*) Order xviii., rule 24.

(*t*) *Ibid.*, rule 25.

(*u*) Form 210.

(*v*) Order xviii., rule 26.

previous to any adjourned adjudication (*w*). If any claim be sent in after the time fixed by the advertisement (except as before provided in case of an adjournment), the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he thinks fit (*x*).

In taking accounts, all just allowances must be made without any such direction in the order (*y*).

*Interest.* Creditors are allowed interest in respect of debts, as to such of them as carry interest, at the rate they respectively carry, and as to all others, at the rate of 4*l.* per cent. per annum, from the date of the order. They are also allowed the costs of successfully proving their debts (*z*).

On legacies, interest is to be computed at the rate of 4*l.* per cent. per annum, from the end of one year from the date of the testator's death, unless otherwise ordered or a different rate or time of payment is directed by the will (*a*).

*Application for further directions.* Where the registrar, high bailiff, receiver, or any party, has by any order been directed to do any act for which further order or directions are necessary, the registrar must apply to the judge; and on such application he may give such direction or make such order as he thinks fit, or may appoint a time to hear all parties upon it. If the judge makes such appointment, it will operate as a stay of proceedings until the day appointed, if he so directs (*b*).

*Absent parties.* The registrar must, when any matter is referred to him by an order, as soon as conveniently may be, ascertain if there are any parties who, if the decretal order had been made in a suit pending in the Chancery division of the high court, ought, under 15 & 16 Vict. c. 86, s. 42 (*c*), to be served with a notice under rule 8

(*w*) Order xviii., rule 27.

(*x*) *Ibid.*, rule 28.

(*y*) *Ibid.*, rule 29.

(*z*) Order xxxvii., rule 18.

(*a*) *Ibid.*, rule 19.

(*b*) Order xviii., rule 34, forms 201, 202.

(*c*) These cases are: 1. Administration suits by a residuary legatee or next of kin; by any legatee interested in a legacy charged upon realty, and every person interested in the proceeds of a sale of realty; by any re-

siduary devisee or heir; and by any executor or administrator.

2. Suits for the execution of the trusts of any deed or instrument by one of several *cestuis que trustent*, or by any trustee. 3. Suits for the protection of property pending litigation, and in all cases in the nature of waste, by one person on behalf of himself and all persons in the same interest. See Morg. Chan. 195 *et seq.*, and *ante*, p. 96.

of such section (*d*). The notice must be prepared by the registrar, and issued to the bailiff, who must serve it. On such notice, the party served may attend the proceedings under the order (*e*); and he may apply to the court at the next sitting, or by leave of the judge at any subsequent sitting, to cancel, vary, or add to the order (*f*). These provisions are extended to partition suits (*g*).

**JUDGMENT AND ENFORCEMENT OF IT.**—*Registrar's certificate* (*h*). When all the matters directed by the court in its order to be certified by the registrar have been ascertained by him, he presents to the court a certificate of the same in writing, signed by him (*i*), on the day appointed for such presentment in the order; but he must prepare the certificate at least seven days before such day, and must give notice by post (*j*) to all parties to the suit that such certificate lies at his office, open to the inspection of all parties interested therein or affected thereby. He must deliver a copy of it to any person requiring it, upon payment of the costs of such copy (*k*). If any party interested in or affected by the certificate desires to have it varied, he must apply to the judge himself, or by his counsel or solicitor, on the day of presentment, and the judge will hear and determine such application, and vary or confirm the same, as he thinks fit (*l*). If there is no application to vary the certificate, it is taken as confirmed, unless the judge otherwise orders (*m*).

*Registry of judgments.* Judgments and decrees must be registered with the registrar of county court judgments in London, who registers the same under the direction of the Commissioners of the Treasury (*n*).

*Enforcement of judgments and orders.* When any party who is entitled to the benefit of any order mentioned in the next three following rules desires to enforce it, he must apply to the registrar, who thereupon issues to the bailiff a copy of the order under the seal of the court, with a notice to the party to be bound endorsed thereon, and the bailiff forthwith serves the same upon such party. No process to enforce the same can, unless by leave of the

(*d*) Order xviii., rule 35.

(*e*) *Ibid.*, rule 36, form 208.

(*f*) *Ibid.*, rule 37.

(*g*) 31 & 32 Vict. c. 40, s. 9.

(*h*) For heading and conclusion,

see form 2.

(*i*) Order xviii., rule 30, form 211.

(*j*) Form 212.

(*k*) Order xviii., rule 31.

(*l*) *Ibid.*, rule 32.

(*m*) *Ibid.*, rule 33.

(*n*) 28 & 29 Vict. c. 99, s. 15.



judge, be issued until three days after the copy and notice have been served on the party to be bound thereby in the same manner as an ordinary summons. Where, however, the order is in the nature of an injunction (*o*), the registrar must, if the party by whom it was obtained desires to have it served by his solicitor, allow it to be so served (*p*). These processes are called *warrants*, and are either warrants of *fi. facias*, or of *possession* or *assistance*, according as money is ordered to be paid, either to a party, or into court, or as lands, tenements, goods, or chattels, are ordered to be delivered up, or to be sold, or held in possession, until an order is made for the disposition of the same. A warrant of *fi. fa.* is issued on the application of the person having the conduct of the suit, or of the payee; and warrants of *possession* or *assistance* on the application of the person entitled to possession (*q*). If the high bailiff is directed to take possession of goods or chattels without selling them, he must make an inventory or appraisement of them, and on receiving, as a deposit, the amount of such appraisement, or sufficient security, to the satisfaction of the registrar, he may relinquish possession on condition that they shall be re-delivered to him, or held to abide the order of the court (*r*).

*Committal.* Where any person acting in a fiduciary capacity is required by any order to pay money in his possession or under his control, or to do an act within a certain number of days after service of the copy of the order, and he does not pay the money or perform the act within the time, the registrar, on the application of the person interested in the enforcement of the order, will issue to the high bailiff, or to such person for service by his solicitor, a notice under seal requiring the person who has neglected to obey the order to appear at a court, on a day named therein, to show cause why he should not be committed for contempt in having neglected to obey such decree or order (*s*). He may then in some cases be committed accordingly (*t*), and a warrant issued to the high bailiff for his apprehension (*u*).

Where any breach of an order in the nature of an in-

(*o*) See *ante*, p. 166.

(*p*) Order xix., rule 28.

(*q*) 28 & 29 Vict. c. 99, s. 8;  
order xix., rule 29, forms 214,  
215.

(*r*) Order ii., rule 34.

(*s*) Order xix., rule 31, form  
220.

(*t*) Form 222.

(*u*) Form 223. See, as to  
discharge from custody, *post*,  
p. 309.



junction has been made, the registrar must, on application by the party interested in the enforcement of the order, issue to the high bailiff, or to such person for service by his solicitor, a notice under seal of the court, requiring the person who shall have been guilty of the breach of the order to appear at a court to be held on a day to be named, to show cause why he should not be committed for having disobeyed the order (*v*).

The above provisions, as to imprisonment for non-payment of money, are subject to those of the Debtors Act, 1870, which abolishes imprisonment for non-payment of money except in certain cases. The power of commitment under section 5, for non-payment of small debts, has been fully explained (*ante*, p. 240), and the same provisions seem to apply to equity proceedings in the county courts, so far as they are applicable. It is observable, however, that no limit is fixed by the Act, as has been already noticed (*ante*, p. 240), as to the amount of county court judgments in respect of which commitments may be made. There seems to be no reason, therefore, why a county court judge should not commit for any amount up to the limit of his jurisdiction. For instance, if a decree were made in a partnership suit for payment of 300*l.* by one partner to the other, there seems to be no provision to prevent the committal of the partner if he made default. A court of equity could commit for non-payment of costs of suit ordered to be paid by a defendant under section 5 (*w*).

A special reservation of the power of imprisonment is made (*x*) in case of a default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control. The proceedings for committal in any such case will be those for contempt mentioned above, and not those under the Debtors Act. Execution may, however, be issued against the property of the defaulter without previous committal (*y*). It seems that where default is made in payment by a person acting in a fiduciary capacity the court has no discretion to refuse the attachment; so a joint executor was attached,

(*v*) Order xix., rule 30. For the order thereon, see forms 221, 222.

(*w*) *Hewitson v. Sherwin*, L. R. 10 Eq. 53; 18 W. R. 802. See *Harvey v. Hall*, L. R. 11 Eq. 31, where commitment ordered; and *Rogers v. Rogers*, W. N. 1871, 11,

18, a case of commitment for neglect to pay money into court.

(*x*) 32 & 33 Vict. c. 62, s. 4, sub-s. 3. See *Young v. Dallimore*, 18 W. R. 445.

(*y*) 32 & 33 Vict. c. 62, s. 8; *Sykes v. Dyson*, L. R. 9 Eq. 228.

although his co-executor had misapplied the money, and the executor committed had never had possession of the money (*z*).

So, too, a special reservation of the power of committal is made for default by an attorney or solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order (*a*). A default by a solicitor in payment of a balance proved due from him upon taxation of his bill of costs is within this clause (*b*); but the costs of a motion made by a solicitor by way of appeal, when he was ordered to pay costs, have been held to be costs payable as a private individual, and not as an officer of the court (*c*). It would appear that either in the last case, or in that of a trustee, a committal for six weeks might be obtained under section 5 of the Debtors Act, instead of under the provisions just mentioned; the latter are, however, probably preferable, as no limit is fixed for the term of imprisonment, and the proceedings are simpler.

*Change of parties.* See *ante*, p. 107, for the provisions as to change of parties caused by transmission of interest or liability (*d*).

*Discharge from custody.* A person in custody by order of the court, other than under an order under the Debtors Act, 1869, may apply to the registrar and be discharged by him upon giving to the party, at whose instance he was committed, two days' notice of the intention to make such application (*e*).

*Legacy and succession duty.* Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty is payable to the revenue under the Acts relating to legacy or succession duty, the registrar must, before making the payment, require a certificate from the proper officer of the payment of the duty chargeable in respect of such fund, or any part thereof respectively (*f*).

(*z*) *Evans v. Bear*, L. R. 10 Ch. 76; *S. P., Middleton v. Chichester*, L. R. 6 Ch. 152.

(*a*) 32 & 33 Vict. c. 62, s. 4, sub-s. 4.

(*b*) *In re Rush*, L. R. 9 Eq. 147; 18 W. R. 331.

(*c*) *In re Hope*, L. R. 7 Ch. 523; 20 W. R. 695.

(*d*) And see order xviii., rule 38, *ante*, p. 148.

(*e*) Order xxxvii., rule 20, form 224. For order of discharge, see form 225.

(*f*) Order ii., rule 14.

*Legacy, &c., to which infant or person beyond the seas is entitled.* Any legacy or sum of money to which any person who is an infant or absent beyond the seas may be found or declared entitled by any county court in any suit or matter, may be ordered by the judge of such county court to be paid to the accountant-general of the Court of Chancery, in accordance with the provisions of 36 Geo. 3, c. 52, s. 32; and all amounts so paid, with the dividends thereon, must be paid or transferred to the person or persons entitled thereto, on application by summons to one of the vice-chancellors in chambers (*g*)—*i.e.*, apparently in the Chancery division of the high court. Where money, to which an infant or person beyond the seas is found to be entitled, is ordered to be paid to the accountant-general of the Court of Chancery, the order must be drawn up by the registrar, and served personally by the bailiff; and if default in payment is made, the registrar must give notice in writing to the judge, who may thereupon order execution to issue against the goods and chattels of the person making default (*h*).

*Payment into court under 28 & 29 Vict. c. 99.* Where a party is directed to pay money into court under the County Courts Act, 1865, he shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge, pay the same into a post-office savings bank, in accordance with the provisions of section 26 of the County Courts Act, 1867 (*i*).

*Entry of payments.* The registrar shall enter in the "Cash Book," and "Ledger for Equitable Proceedings under the County Courts Act, 1865," all sums so paid to the account of the proceeding in which it is paid, and where the interest of any fund, paid into a post-office savings bank, has been directed to be paid to any person, the registrar shall pay the same half-yearly out of any general moneys in his hands (*j*).

*Post-office savings bank book to be transmitted.* In the first week of January in each year the registrar shall transmit to the postmaster-general his post-office savings bank book, and upon its return he shall send a letter, according to the form in the schedule, to the Commissioners of the Treasury

(*g*) 28 & 29 Vict. c. 99, s. 5;  
form of order, form 217.

(*h*) Order xxvii., rules 6, 7.

(*i*) Order xxvii., rule 1. See  
*post*, p 313.

(*j*) *Ibid.*, rule 2.

requesting them to authorise the postmaster-general to allow him to draw out a sum equal to the interest which he may have paid to persons during the then past year, and shall apportion the same, and carry the proportion to the account of each fund on which he has paid interest as aforesaid (*k*).

*Mode of withdrawing moneys from post-office savings bank.* The registrar, wherever he shall be directed by the court to draw out of a post-office savings bank the fund or part of the fund in any suit or matter, shall send a letter to the Commissioners of the Treasury according to the form in the schedule (*l*).

*Interest to be apportioned.* Where money has, before January 1, 1868, been invested in stocks, and the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall reinvest the dividend in the same names, except where and so far as the court shall otherwise direct, and shall apportion the amount so reinvested in his books to the right accounts (*m*).

*Examination of married woman interested in fund.* Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value 200*l.*, or 10*l.* in annual payments, she shall be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement, and if the court think fit to make such settlement, and in all cases where the married woman is under age, shall by its judgment make such settlement accordingly: Provided always, that the court may, if it thinks fit, order such settlement to be prepared by counsel and settled by the judge (*n*).

### PART III. PROCEEDINGS BY PETITION.

PETITION. Proceedings under the 5th and 6th divisions of the jurisdiction (*ante*, pp. 295, 296) must be commenced by petition, which must be filed and delivered at the office of the registrar seven days before the sitting of the court

(*k*) Order xxvii., rule 3, form 234.

(*m*) Order xxvii., rule 5.  
(*n*) *Ibid.*, rule 8.

(*l*) *Ibid.*, rule 4, form 234.

at which the petition is to be heard or application made (*o*).

*Registrar to issue notices of day of hearing of petition.* Upon the filing of the petition, the registrar must issue the copies under the seal of the court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself and under the seal of the court, informing them of the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient (*p*).

*Service of petitions and notices.* The bailiff of the court shall, four days at least before the hearing, serve all copies of such petitions and notices (*q*).

*Facts may be supported by affidavit.* Upon the trial of any claim under this order, unless the judge shall otherwise direct, the facts relied upon in support of or in opposition to such claim shall be proved by affidavit (*r*).

*Registrar to draw up order.* Where the judge makes an order upon such petition the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order (*s*).

*Rules to extend to proceedings under this order.* The preceding rules relating to proceedings which, prior to November 1, 1875, would have been commenced by a plaint in equity, shall, in all cases where they are applicable, be construed as extending to proceedings under this order (*t*).

*Payment into court by trustees.* When any person is desirous of paying money, transferring stock, or depositing security in trust to attend the orders of any county court (*ante*, p. 295), he must file with the registrar an affidavit, entitled In the Matter of the Act 30 & 31 Vict. c. 142, and of the particular trust, and setting forth:

1. His own name, address, and description. 2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund. 3. The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the court. 4. A

(*o*) Order xxxi., rules 15, 16.]

(*p*) *Ibid.*, rule 17.

(*q*) *Ibid.*, rule 18.

(*r*) Order xxxi., rule 19.

(*s*) *Ibid.*, rule 20.

(*t*) *Ibid.*, rule 21.

short description of the trust or of the instrument creating it. 5. The names, addresses, and descriptions of the persons interested in or entitled to or claiming to be interested in or entitled to the fund, to the best of the knowledge and belief of the trustee. 6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred, or security deposited, as the court may think proper to make or direct (*u*).

When an affidavit of this description is filed, the registrar endorses upon it a memorandum of the day on which it was filed, which date, when so endorsed, is taken for all purposes as the date of filing the same (*v*). The persons filing it, or any of them, will be entitled to have a certificate, under seal of the court, from the registrar of the filing (*w*). Upon the receipt of such certificate, the persons filing the affidavit, or any of them, may, in the case of money, pay it at once into a post-office savings bank established in the town in which the county court is held, and obtain from the officer of such bank a receipt for the same, which receipt is to be left with the registrar; or, in the case of stocks, he may transfer the stocks into the names of the registrar and treasurer of the county court mentioned in such certificate, or of the registrar and superintendent of the county court department of the Treasury, where there is no treasurer, in trust to attend the order of the court; the transfer ticket must be deposited with the registrar. The registrar must endorse on the receipt, or the transfer ticket, a memorandum of the day on which he receives it (*x*). In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the names of the treasurer, or superintendent of the county court department of the Treasury, if there be no treasurer, and registrar, in trust to attend the orders of the court. The registrar must then endorse on the affidavit a memorandum of the date of such deposit (*y*); and, within twenty-four hours after, send notice of the same to the treasurer of the court, or, if there be no treasurer, to the superintendent of the county court department of the Treasury for the time being (*z*). Immediately after the recording of the receipt or transfer ticket, or the deposit of the security, the registrar must give to the parties

(*u*) Order xxxi., rules 1, 2, form 226.

(*v*) *Ibid.*, rule 3.

(*w*) *Ibid.*, rule 4, forms 228, 229.

(*x*) Order xxxi., rules 5 and 6; 30 & 31 Vict. c. 142, s. 24.

(*y*) Order xxxi., rules 7, 9.

(*z*) *Ibid.*, rules 8, 9, form 233.



making such payment, transfer, or deposit, an acknowledgment or certificate of the same (*a*), and cause the necessary entries to be made in the book heretofore called "The Suits and Proceedings in Equity Book," of the title of the particular trust, and the amount of money or stock paid or transferred, or security deposited, and the names and addresses of the person or persons making such payment, transfer, or deposit, and the names of every person stated in the affidavit to be or to claim to be interested in or entitled to such money or stock, and their addresses and descriptions as given in the affidavit. The registrar must forthwith send notice, under the seal of the court, by post or otherwise, of such payment, transfer, or deposit, to each of the last-mentioned persons (*b*).

The registrars must comply with all regulations which may from time to time be made by the Commissioners of her Majesty's Treasury for the safe custody of any securities deposited with them under section 24 of the County Courts Act, 1867 (*c*).

Any person interested in or entitled to the funds in court, or (if need be, but not otherwise) the trustee who desires the directions of the court as to the investment, paying out, or distribution of the fund or income, may file a petition setting forth shortly the particular trust in which he applies, and the substance of the order which he seeks to obtain; and if the nature of the case require it, he must give full particulars of his claim, and of the relief or remedy to which he claims to be entitled. The court, in adjusting the costs, must inquire, at the instance of any party, into any prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same (*d*).

Where the application shall relate to the capital of the fund in court, the trustee and all persons interested in such fund must be served with the petition, unless the court otherwise directs; and where the application relates to the income only of the trust fund, the trustee only shall be served with the petition, unless the court otherwise directs (*e*).

When the registrar is directed by the court to draw out from the bank the fund or part of the fund in any suit or

(*a*) Order xxxi., rule 10; 30 & 31 Vict. c. 142, s. 24, forms 230, 231.

(*b*) *Ibid.*, rule 11, form 232.

(*c*) Order ii., rule 15.

(*d*) Order xxxi., rule 12, form 227.

(*e*) *Ibid.*, rule 13.



matter, he must send notice to the Commissioners of the Treasury (*f*). If a trustee pays money into court under the foregoing provisions, without sufficient reason, he may be ordered to bear his own costs, and the whole or part of the costs of other parties, as the judge thinks fit (*g*).

#### PART IV. APPEAL.

An appeal lies to the high court in all equity actions on the same grounds upon which an appeal lies in common law actions (*h*). The appeal may either be by case (*i*) or by motion (*j*). The appeal lies to the same appeal court as common law appeals. The proceedings on appeal are the same as in common law appeals, except that when the appeal is by case, the notice of appeal may be given within thirty days of the judgment complained of, and, instead of giving the full security required in common law appeals, the appellant is only required to deposit 10*l.* as security for the costs of the appeal (*k*). In accordance with the decisions at law, it has been held that the notice may be waived or the time for giving it enlarged (*l*); and that, where a case is stated, the court will not entertain points not raised by the case (*m*).

The court of appeal has complete control over the costs (*n*), and it seems that, in general, when an appellant succeeds he will have the costs of the appeal as well as those of the action in the county court (*o*).

*Appeals in county of Lancaster.* When the county court is situate in the county palatine of Lancaster, the appeal lies either to the high court, or to the court of chancery of that county; but no appeal may be made to the palatine court unless the consent in writing of the respondents or their solicitors is first obtained (*p*).

(*f*) Order xxvii., rule 4, form 234.

(*g*) Order xxxi., rule 14.

(*h*) *Ante*, p. 198; 28 & 29 Vict. c. 99, s. 18.

(*i*) *Slattery v. Anton*, 14 W. R. 511; 14 L. T. N. S. 510.

(*j*) 38 & 39 Vict. c. 50, s. 6.

(*k*) 28 & 29 Vict. c. 99, s. 18; and see remarks, *ante*, pp. 4, 198.

(*l*) *Ward v. Raw*, L. R. 15 Ex. 83. See *ante*, p. 204.

(*m*) *Williams v. Evans*, L. R. 19 Eq. 547.

(*n*) 28 & 29 Vict. c. 99, s. 18.

(*o*) *Ashby v. Sedgwick*, L. R. 15 Eq. 245; 28 L. J. N. S. 185; 42 L. J. Ch. 355. See also *Booth v. Hutchinson*, L. R. 15 Eq. 35;

*Coote v. Whittington*, L. R. 16 Eq. 551; and (before Stuart, late V.C.) *Robinson v. O'Kell*, W. N. 1870, 115. And see *ante*, p. 214.

(*p*) 28 & 29 Vict. c. 99, s. 19.

## CHAPTER XV.

### QUASI EQUITABLE JURISDICTION.

#### PART I. CLAIMS UNDER PARTNERSHIPS.

THE provisions in this chapter, under both heads, are now really obsolete, on account of the more extensive equity jurisdiction, and the assimilation of the practice in actions at law and under the equity jurisdiction. The provisions not having, however, been expressly repealed, they are retained, with the decisions upon them, *voleant quantum*.

At law an action would not lie by one partner against another for the unliquidated balance of a partnership account, except by means of the almost obsolete action of account (*a*), and a court of equity was generally resorted to in such cases. As has been seen (*ante*, p. 296), the county courts have a limited equitable jurisdiction in partnership matters, but they have also jurisdiction to entertain an action under their common law jurisdiction, for the whole or part of the unliquidated balance of a partnership account, where the amount claimed does not exceed 50*l.* (*b*). As there was no remedy at law in such a case, a plaint under this section could not be removed into the superior courts by *certiorari*; but if the plaint were framed so as to state the cause of action to be for a specific and ascertained amount, the court would not, after granting a *certiorari*, quash the writ, on affidavits by the plaintiff showing that the plaint was issued for the unliquidated balance of a partnership account (*c*).

(a) See Lindley on Partnership, 878; *Bovill v. Hammond*, 6 B. & C. 149.

(b) 9 & 10 Vict. c. 95, s. 65.  
(c) *Rees v. Williams*, 7 Ex. 1; 21 L. J. Ex. 24.

## PART II. CLAIMS UNDER WILLS OR INTESTACIES.

In addition to their jurisdiction in equity (*ante*, p. 295), the county courts have jurisdiction to decide on any claim, not exceeding 50*l.*, in respect of a distributive share of personal estate under an intestacy, or of any legacy under a will (*e*).

No action was maintainable in the superior courts of law for a legacy (*f*), or for the distributive share of personal estate, under an intestacy (*g*), even though the executor or administrator had expressly promised to pay (*g*), although it was otherwise with respect to specific legacies (*h*). The grounds of the above-mentioned decisions appear to be that the courts of law had no machinery for doing complete justice between the parties by imposing terms (*i*), or, in other words, of enforcing trusts (*j*). But the above section did not give power to the county courts to entertain a question of pure trust (*k*)—*i.e.*, to exercise the same jurisdiction as a court of equity, although Lord Campbell thought otherwise (*l*). How far the county courts might go in dealing with a legacy was clearly expressed by Parke, B. (*m*): "The question is, whether, instead of a legacy to the plaintiff, it is a legacy to the executors in trust, and whether it is a legacy within the meaning of the Act. We have had an opportunity of consulting my Lord Cranworth about it, and he agrees with us in thinking that this falls under the description of a legacy; every legacy is, in truth, a trust in the executor to pay it to the legatee in a certain sense. In this case, as there was no intervention of the trustee required for the execution of the trust, it is simply a direction to hold in trust for another; . . . and we think that the county court has jurisdiction." This ruling seems to have been adopted as the correct view of the jurisdiction; and a suitor had, therefore, in all cases, to consider whether he took his legacy direct from the donor, or through the intervention of a trustee. He

(*e*) 9 & 10 Vict. c. 95, s. 65.

(*f*) *Deeks v. Strutt*, 5 T. R. 690.

(*g*) *Jones v. Tanner*, 7 B. & C. 542.

(*h*) See *Williams on Executors*, 1785.

(*i*) See *per* Lord Kenyon, C.J., 5 T. R. 692.

(*j*) See *Lewin on Trusts*, 16.

(*k*) See *per* Parke, B., *Pears v. Wilson*, 20 L. J. Ex. 381; 6 Ex. 833; *Phillips v. Hewston*, 25 L. J. Ex. 133; 11 Ex. 699; *Beard v. Hine*, 10 W. R. 45.

(*l*) *Fuller v. Mackay*, 22 L. J. Q. B. 415; 2 E. & B. 573.

(*m*) *Pears v. Wilson*, *supra*.

must also have considered whether the validity of any devise, bequest, or limitation under any will or settlement might be disputed in the action, as in such case the county court would have no jurisdiction (*n*). It is now somewhat doubtful how far the latter restriction may control actions whether at law or in equity, but the present jurisdiction under consideration is practically useless.

In the following case it was held that the bequest was a legacy within the meaning of the Act, and not a trust. A testator bequeathed certain property to C. M. and J. W., their executors, &c., in trust for certain purposes, and the residue he bequeathed to the same persons, upon trust as to one-sixth part, to pay the same equally between the four children of his sister. He then appointed C. M. and J. W. executors and trustees of his will. By a codicil he appointed S. E. an executor in the room of C. M. deceased, and to act in conjunction with the other executor of his will. The plaintiff's late wife was one of the four children of the testator's sister; and the plaintiff, as her administrator, brought an action in a county court to recover from the defendant, J. W., a fourth part of the sixth share of the residue (*o*). But where a testator bequeathed to the defendant all his effects on trust, *inter alia*, to pay the plaintiff 100*l.* when he should attain twenty-one years, and to pay him the interest in the meantime, with powers of maintenance, &c., and on attaining his majority the plaintiff sued for the residue of the 100*l.*, part having been already applied, it was held that the court had no jurisdiction, Alderson, B., observing that it was the case of a real trustee, and not of an executor with a bare duty to pay over the money (*p*).

The granting of letters of administration is a material part of the cause of action in a plaint under the section (*q*).

When the plaintiff contends that the executor has been guilty of a *devastavit*, and seeks to charge him with assets on that account, the county court has jurisdiction to try the question of the *devastavit* under a plaint for a legacy (*r*).

The Court of Chancery formerly restrained proceedings in the county court, after a decree had been made in an

(*n*) 9 & 10 Vict. c. 95, s. 58.

(*o*) *Pears v. Wilson*, 20 L. J. Ex. 381; 6 Ex. 833.

(*p*) *Phillips v. Hewston*, 25 L. J. Ex. 133; 11 Ex. 699.

(*q*) *Fuller v. Mackay*, 22 L. J.

Q. B. 415; 2 E. & B. 573.

(*r*) *Winch v. Winch*, 22 L. J.

C. P. 104; 13 C. B. 128.

administration suit for the administration of the assets of a testator (*s*). So legatees who had mortgaged their interest in a legacy were restrained from prosecuting a suit in a county court to obtain payment from the executors (*t*).

From the fact of actions of the above description not having been cognisable in the superior courts of common law, they could not be removed by *certiorari* into a superior court; but where a testator devised certain estates to his son on condition of his "paying the following sum, viz., (*inter alia*) I will, order, and direct him to pay unto his mother the sum of 4s. a week, weekly," &c., and a plaint was entered for eighty-seven weeks' arrears, it was held to be a claim for a debt, and not a legacy, and was, therefore, removed into the court above (*u*).

(*s*) *Ratcliffe v. Winch*, 22 L. J. Ch. 915; 17 Beav. 217.

(*t*) *Neighbour v. Brown*, 26 L. J. Ch. 670.

(*u*) *Longbottom v. Longbottom*, 22 L. J. Ex. 74; 8 Ex.

203.

## CHAPTER XVI.

### ACKNOWLEDGMENTS BY MARRIED WOMEN.

ANY acknowledgment of any deed to be made by any married woman under 3 & 4 Wm. 4, c. 74, may be received by a judge of a county court in the same manner as such acknowledgment may be received by a judge of the high court (*a*).

Before receiving the acknowledgment, the judge must examine the married woman apart from her husband, touching her knowledge of the deed, and must ascertain whether she freely and voluntarily consents to it; and unless she does so, he must not permit her to acknowledge it, and the deed will then, so far as her execution is concerned, be void (*b*).

The judge must, after acknowledgment, sign a memorandum of the acknowledgment, to be endorsed on, or written at the foot, or in the margin of the deed (*c*). The form of memorandum will be found in the body of the Act.

He must also sign a certificate, the form of which will be found below, of the taking of the acknowledgment, to be written or engrossed on a separate piece of parchment (*d*).

The certificate, together with an affidavit by some person verifying it and the signature of the party by whom it purports to be signed, must be lodged in the proper office of the Common Pleas division of the high court; and if all the requisites of the Act in regard to the certificate have been complied with, the officer of the court must cause the certificate and the affidavit to be filed of record (*e*).

(*a*) 19 & 20 Vict. c. 108, s. 73.

(*c*) 3 & 4 Wm. 4, c. 74, s. 84.

(*b*) 3 & 4 Wm. 4, c. 74, s. 80.

(*d*) *Ibid.*, s. 85.

(*e*) *Ibid.*

It is the duty of the solicitor employed to prepare the certificate and affidavit (*f*). The forms required are appended :

*Form of certificate of acknowledgment.*

These are to certify that on the                      day of                      in the year                      before me the undersigned                      judge of the county court of                      holden at                      appeared personally                      the wife of                      , and produced a certain indenture, marked                      , bearing date the                      day of                      and made between                      (*g*), and acknowledged the same to be her act and deed : And I do hereby certify that the said                      was, at the time of her acknowledging the said deed, of full age and competent understanding, and that she was examined by me apart from her husband, touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same.

*Form of affidavit (h).*

In the Common Pleas.

I, A. B., of                      in the county of                      , gentleman, one of the attorneys of the Court of                      , at Westminster, make oath and say,

1. That I know                      the wife of                      , in the certificate hereunto annexed mentioned, and that the acknowledgment therein mentioned was made by the said                      , and the certificate signed by the judge in the said certificate mentioned, on the day and year therein mentioned, at                      , in the                      of                      , in my presence.

2. That at the time of making such acknowledgment the said                      was of full age and competent understanding, and knew the said acknowledgment was intended to pass her estate in the premises respecting which such acknowledgment was made.

3 (*i*). That previous to the said                      making the said acknowledgment, I inquired of her the said                      , whether she intended to give up her interest in the estate                      in respect of which such acknowledgment was taken, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up her interest in such estate                      , and that in answer to such inquiry the said                      declared that a provision was to be made for her in consequence of her giving up such interest in the said estate.

4 (*i*). That before the said acknowledgment was so taken, I was satisfied and do now verily believe that such provision has been made by                      , and that such                      has been produced to the said judge.

3 (*j*). That previous to the said                      making the said

(*f*) See end of Appendix D.                      (*i*) Where a provision is to be

(*g*) The names only of the                      made.                      parties to be set out.                      (*j*) Where no provision is to be

(*h*) From Shel. R. P. Stats.                      made.



acknowledgment, I inquired of her the said \_\_\_\_\_, whether she intended to give up her interest in the estate \_\_\_\_\_ in respect of which such acknowledgment was taken, without having any provision made for her in lieu of or in return for, or in consequence of her so giving up her interest in such estate \_\_\_\_\_, and that in answer to such inquiry the said \_\_\_\_\_ declared that she did intend to give up her interest in the said estate \_\_\_\_\_ without having any provision made for her in lieu of or in return for or in consequence of her so giving up such her interest, of which declaration of the said \_\_\_\_\_ I have no reason to doubt the truth, and I verily believe the same to be true.

5. That it appears by the deed acknowledged by the said \_\_\_\_\_ that the premises wherein she is stated to be interested are described to be in the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.  
Sworn, &c.

All alterations, interlineations, or erasures in the certificate or affidavit must be initialed by the registrar of the county court, who must also swear the solicitor to the affidavit (*k*).

*Registration of protection orders.* It may here be mentioned that orders for the protection of the earnings and savings of married women deserted by their husbands made by police magistrates or justices at petty sessions must be entered within ten days of the making thereof, with the registrar of the county court within whose jurisdiction the wife is resident (*l*). These provisions as to time are, however, directory, not imperative (*m*).

*Married Women's Property Act, 1870.* For the provisions affecting married women, and relating to proceedings in county courts, see *ante*, pp. 24, 100.

(*k*) See end of Appendix D.

(*l*) 20 & 21 Vict. c. 85, s. 21.

(*m*) *In the Goods of Betty*

*Farraday*, 31 L. J.; P. & M. 7.

## CHAPTER XVII.

### COURTS, OFFICERS, AND PENALTIES.

#### PART I. CONSTITUTION OF COUNTY COURTS AND DUTIES OF THEIR OFFICERS.

**COURTS.** The jurisdiction of the courts popularly known as county courts is derived exclusively from the statute law. By the first statute applicable to them (*a*), it was enacted that the Queen, with the advice of the Privy Council, should have power to order that the Act should be put in force in such counties as she thought fit; and by Orders in Council dated March 9, 1847, with the exception of the city of London, England was divided into districts, and a court established in each. Any Order in Council made under the Act must be published in the "London Gazette" (*b*).

Any court may, under certain circumstances, be excluded from jurisdiction by Order in Council (*c*), and the districts may be altered by the lord chancellor (*d*). The arrangement of the courts and districts has been from time to time under these powers considerably altered. A list of the courts and circuits of the judges as existing at the commencement of each year will be found in the "Law List."

The county courts are courts of record (*e*). All summonses and other process must be under seal of the court (*f*). The seal is judicially noticed (*g*).

(*a*) 9 & 10 Vict. c. 95, ss. 1, 2.

See saving clause as to other local courts, *ibid.*, s. 4.

(*b*) *Ibid.*, s. 8; 12 & 13 Vict. c. 101, s. 11.

(*c*) 15 & 16 Vict. c. 54, s. 7.

(*d*) 21 & 22 Vict. c. 74, s. 1.

(*e*) 9 & 10 Vict. c. 95, s. 3.

(*f*) *Ibid.*, s. 57.

(*g*) Taylor on Evidence, 5th edit., s. 6.

The City of London Court is now a county court, and is subject to the same provisions as other county courts; nothing in the County Courts' Acts is, however, to take away or diminish any of the powers, rights, or privileges of the judge of such court, or the authority of the mayor, aldermen, and commons of the city of London in common council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority existed previously to the passing of the County Courts Act, 1867 (*h*). The powers, rights, and privileges reserved by this proviso appear to have reference to salary, fees, and compensation only, though the meaning is obscure; and the proviso does not, at any rate, operate to exempt the judge from the provisions of the 19 & 20 Vict. c. 108, s. 43 (*ante*, p. 82); and if he refuses to perform his duty, a rule to compel him to do so will lie under the last-mentioned section (*i*). The power to remove the registrar is, however, reserved to the common council, and is not vested in the lord chancellor, as in other cases (*j*). The power to send causes for trial to the City of London Court under 19 & 20 Vict. c. 108, s. 26, which was extended to it by 30 & 31 Vict. c. 142, s. 32, is now taken away by 30 & 31 Vict. c. 50. This is presumably a mistake in legislation. See the remarks upon these provisions in chap. x. Section 7 of 38 & 39 Vict. c. 50, as to remuneration of officers for work under that Act, does not extend to the City of London Court.

The metropolitan courts are, for the purpose of service of summonses and the issue of subsequent process under them, practically the same as one court with several judges. The provisions relating to them have been already explained (*k*).

*Maintenance and provision of court-houses, &c.* The Commissioners of Works and Public Buildings, with the approval of the Commissioners of the Treasury, must from time to time provide, by purchase or otherwise, such court-house, offices, and buildings as may be necessary for carrying on the business of any county court, and cause the same to be furnished, cleaned, lighted, and warmed, and give directions to the registrar of each court with regard

(*h*) 30 & 31 Vict. c. 142, ss. 22 W. R. 643; 30 L. T. N. S. 34, 35; and see 28 & 29 Vict. 378.

(*j*) *Osgood v. Nelson*, L. R. 5 H. L. 636; 41 L. J. Q. B. 329.

(*k*) *Ante*, pp. 50, 120.

to the hiring and dismissing of servants as shall seem fit (*l*).

In any town or place where a court is held, the town hall, court-house, or other public building belonging to any county, city, borough, or town, may be used for the purposes of holding the court, without charge for rent or other payment, except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purposes of the courts, and for all other expenses necessarily incidental to the use of the building for the purposes of the courts. The sittings must be arranged, however, so as not to interfere with the ordinary business in such building; and these provisions do not apply to any city, borough, or town in which, before the Act (August 4, 1850), a building for the purposes of the courts had been erected (*m*).

The expense of building, purchasing, or providing any messuages or lands for the purposes of the county courts, and of repairing, furnishing, cleaning, lighting, and warming the court-houses and offices, and of payment of the salaries of the necessary servants for taking charge of such court-houses and offices, and of supplying the courts and offices with law and office books and stationery, and of postage stamps, and the disbursements of the high bailiffs in conveying to prison persons committed, and all other expenses incident to the holding of the said courts, must be paid by the Commissioners of the Treasury out of any moneys provided by Parliament for such purpose (*n*).

All property, real and personal (other than money and securities for money, books, papers, and records), belonging to any county court, is now vested in the Commissioners of Works and Public Buildings (*o*). Money and securities for money are vested in the treasurer (if any); and on his death, removal, or resignation, they become vested in the person appointed by the Treasury to supervise the examination of accounts; and they are vested in him also where there is no treasurer (*p*).

JUDGE. The duties of the judge and other officers during the progress of an action have been explained in the foregoing pages, and a recapitulation of them is not deemed advisable. But there remain yet to be noticed a number of

(*l*) 33 & 34 Vict. c. 15, ss. 2, 4.  
The Lands Clauses Consolidation Act, 1845, applies to purchases of land.

(*m*) 13 & 14 Vict. c. 61, s. 24.

(*n*) 19 & 20 Vict. c. 108, s. 85.

(*o*) 33 & 34 Vict. c. 15, s. 3.

(*p*) 29 Vict. c. 14, s. 8.

general matters more particularly affecting them individually than the practice required to be known for the conduct of any particular action. In order that the whole subject of officers and their duties, and the penalties consequent on their omissions, might be treated of together, mention of them has been deferred until the present chapter.

A judge is appointed to each district (*q*), but one judge may be judge of several districts (*r*). The districts are arranged into circuits, one judge being generally judge in all the districts on his circuit. But, when necessary, two judges may be appointed by the lord chancellor to one or more district or districts (*s*).

The first appointments of judges were made by the lord chancellor (*t*). All future appointments must be made by the lord chancellor, or, where the whole of the district is within the Duchy of Lancaster, by the chancellor of the duchy (*u*). The number of judges may not now exceed sixty (*v*). A judge is removable for inability or misbehaviour (*w*).

The qualifications of all judges to be appointed in succession to any former judge are—that he must be a barrister who is of seven years' standing, or who has practised as a barrister and special pleader for at least seven years, or he must have been the county clerk of the same county at the time of the passing of the 9 & 10 Vict. c. 95 (*x*). No judge may practise at the bar, or as a special pleader or equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, solicitor, attorney, or proctor (*y*). He cannot sit in Parliament (*z*). He may be appointed a justice of the peace for the county, riding, or division of the county for which he is appointed judge, although he may not have the necessary estate in land required for other persons (*a*).

The lord chancellor may recommend to the Commissioners of the Treasury the grant of a pension to any judge afflicted with some permanent infirmity disabling him from

(*q*) 9 & 10 Vict. c. 95, s. 3.

(*r*) *Reg. v. Parham*, 13 Q. B. 858; 18 L. J. Q. B. 281.

(*s*) 21 & 22 Vict. c. 74, s. 2.

(*t*) 9 & 10 Vict. c. 95, s. 9.

(*u*) *Ibid.*, s. 16. For the provisions by which certain lords of manors retain a right of appointment to a vacancy in an office, see 9 & 10 Vict. c. 93, s. 13.

(*v*) 21 & 22 Vict. c. 74, s. 3.

(*w*) 9 & 10 Vict. c. 95, s. 18. See *Ex parte Ramsay*, 18 Q. B. 173; 21 L. J. Q. B. 238; *Reg. v. Owen*, *post*, p. 331.

(*x*) *Ibid.*, s. 16.

(*y*) 15 & 16 Vict. c. 54, s. 16.

(*z*) 25 & 26 Vict. c. 99, s. 4.

(*a*) 9 & 10 Vict. c. 95, s. 21.

the due execution of his office, or who shall be desirous of resigning his office (*b*); but a judge is not to be entitled to compensation if his court be abolished (*c*).

*Deputy.* In cases of illness or unavoidable absence of the judge, particulars of which must be entered on the minutes, a deputy may be appointed (*d*). The right of appointment of deputy is vested in the judge (*e*). The appointment is apparently to be made from time to time, as occasion requires it, and needs no assent or approval of the lord chancellor. The judge may, however, with the approval of the lord chancellor, or the chancellor of the Duchy of Lancaster, where the whole district is within the duchy, appoint a deputy to act for him for any period or periods not exceeding in the whole two calendar months in any consecutive period of twelve calendar months (*f*). This seems to contemplate a permanent deputy, who shall sit from time to time, as occasion requires it.

In case of the inability of the judge to appoint a deputy, the lord chancellor, or the chancellor of the Duchy of Lancaster, in such case as above, may appoint a deputy (*g*); and where, in the absence of the judge, the deputy is from illness or otherwise incapable of performing his duties as deputy, the lord chancellor may appoint another deputy (*h*).

The deputy must be the judge of a county court, or a barrister of seven years' standing, or a person who has practised as a barrister and special pleader for at least seven years (*i*); and during the time in which he acts or is entitled to act as deputy he may not practise as a barrister in any court within the district for which he acts, or is entitled to act (*j*).

The deputy, when duly appointed, has all the powers and privileges, and must perform all the duties, of the judge for whom he is appointed a deputy (*k*). The appointment of deputy is not vacated by the death of the judge; he may continue to act in all the courts of the districts of which the deceased was judge, until the lord chancellor or the chancellor of the Duchy of Lancaster shall otherwise order, or a successor to the judge shall be

(*b*) 15 & 16 Vict. c. 54, s. 15,  
which see as to the amount.

(*c*) 9 & 10 Vict. c. 95, s. 39.

(*d*) *Ibid.*, s. 20.

(*e*) *Ibid.*

(*f*) *Ibid.*

(*g*) *Ibid.*

(*h*) 30 & 31 Vict. c. 142, s. 20.

(*i*) 19 & 20 Vict. c. 108, s. 6.

(*j*) 13 & 14 Vict. c. 61, s. 3,  
which see for exception as to  
Westminster.

(*k*) 9 & 10 Vict. c. 95, s. 20;  
30 & 31 Vict. c. 142, s. 20. See  
form 4.

appointed (*l*). This section was passed after the decision in *Hoey v. M'Furlane* (*m*), where it was held that a deputy's functions entirely ceased on the death of the judge, and that neither he nor the new judge had power to deliver, after the death, judgment in a case which the deputy had heard before, and that the proper course was for the new judge to rehear the case. The new section, however, merely enables the deputy to act until a new judge is appointed, and it is conceived that the same difficulty would then arise in regard to judgments not delivered at the date of the appointment.

By the latest enactment applying to deputies, it is provided that any judge of county courts shall be capable of acting for any other judge of county courts in or without the districts presided over by such judge (*n*), and the marginal note states that the judges shall be auxiliary to one another. As under the provisions already noticed, one judge could be appointed deputy for another in case of illness or unavoidable absence, it is conceived that the object of the above section was in some way to extend the power of judges to act for one another; and it may be contended that the meaning is to enable one judge to act for another without express appointment, simply on request, and in other cases than those of illness or unavoidable absence. When he signs any order or document, the memorandum in form 4 must be made at the foot (*o*).

*Holding courts.* The judge must attend and hold a court at each place in his district at such times as he may appoint, so that there be a court at each place once at least in each calendar month, or such other interval as the lord chancellor may order. The hour as well as the day for holding the court must be fixed by the judge, and notice of the day and hour must, three calendar months before the holding thereof, be affixed in the court-house and in the registrar's office. Whenever any day or hour so appointed is altered, notice of the alteration must be immediately affixed in the like manner; but any judge may from time to time hold additional and adjourned courts (*p*). Two courts may not be holden before the same judge on one day, unless with

(*l*) 19 & 20 Vict. c. 108, s. 11, where provisions as to the remuneration of any such deputy is made.

(*m*) 4 C. B. N. S. 718; 4 Jur. N. S. 785. See *ante*, p. 186.

(*n*) 30 & 31 Vict. c. 142. s. 20, form 4.

(*o*) Order xxxvii., rule 22.

(*p*) 9 & 10 Vict. c. 95, s. 56; order i., rule 1.



consent of the lord chancellor; but this rule does not apply to the holding of any adjourned court or to the City of London Court (*q*). The 9 & 10 Vict. c. 95, s. 3, provides that the county court may be held simultaneously in all or any of the districts; the rule, therefore, it is conceived, only operates to prevent the holding of two courts in one district on the same day.

Judges are not obliged to hold courts in September, unless the lord chancellor otherwise orders. If a court is held in September, it may be closed, with the sanction of the lord chancellor, for any period or periods of time approved by the lord chancellor, not exceeding in the whole four weeks in one year. Every county court must, however, always be open for the receipt and payment of money in and out of court pursuant to the rules (*r*), or for any proceeding in bankruptcy before the registrar (*s*).

*Adjournment on death or absence.* Where by reason of the death or unavoidable absence of the judge, a court cannot be held, the registrar, or in his unavoidable absence, the high bailiff, must adjourn the court to such day as he may deem convenient, and enter in the minute-book the cause of such adjournment (*t*).

*Remuneration.* The judges are paid by salary, and in addition to it are entitled to such reasonable sum as may be allowed to them by the Treasury for travelling expenses, reference being had to the size and circumstances of each district (*u*).

The amounts of the salaries of all newly-appointed judges are to be uniform and fixed at 1,500*l.* a year (*v*). The limit of 1,200*l.*, at which the salaries were formerly fixed, has been increased to 1,500*l.* on account of the addition of the equitable jurisdiction. The salaries of certain judges are fixed in Schedule D to the 19 & 20 Vict. c. 108, and they are also entitled to the addition of the 300*l.* a year for the equity jurisdiction. No successor of any of such judges will, however, be entitled to receive more than 1,500*l.* a year in all (*w*).

The salaries of the judges are payable out of the Consolidated Fund by the Commissioners of the Treasury.

(*q*) Order i., rule 2.

(*r*) *Ante*, pp. 146, 188.

(*s*) 28 & 29 Vict. c. 99, s. 14.

(*t*) 19 & 20 Vict. c. 108, s. 7.

(*u*) 9 & 10 Vict. c. 95, s. 40;

19 & 20 Vict. c. 108, s. 81; 28 & 29 Vict. c. 99, s. 13.

(*v*) 19 & 20 Vict. c. 108; s. 81;

28 & 29 Vict. c. 99, s. 13.

(*w*) *Ibid*.

The sums allowed for travelling expenses are payable only out of money voted by Parliament for the purpose (*v*).

**REGISTRAR.** Every court must have a registrar (*y*), and by order of the lord chancellor, in populous districts, two joint registrars may be appointed (*z*); on any vacancy, however, in the office of joint registrar, no new appointment may be made without the order of the lord chancellor (*a*). The death of one joint registrar does not vacate the office of the other (*b*). No person may now be appointed registrar of more than one court (*c*); before this Act he might, under certain circumstances, have been so (*d*), and before then there appears to have been no provision to prevent it. The registrars of certain courts specified in Schedules A and B to the 9 & 10 Vict. c. 95, and appointed by virtue of the special provisions of that Act, are not, however, unless they desire it, to be subject to the clauses preventing them from being registrars of more than one court (*e*).

The appointment of registrar, except in certain cases (*f*), is vested in the judge, subject to the approval of the lord chancellor. He must be a solicitor (*g*); and any registrar or assistant registrar appointed after the passing of the 13 & 14 Vict. c. 61, must reside within the district of his court (*h*). The office of registrar may not be conjoined with that of treasurer (*i*). The registrar is required to give security (*j*). The lord chancellor, or where the whole of the district for which the registrar has been appointed is within the Duchy of Lancaster, the chancellor of the duchy, may, in his discretion, remove any registrar from his office, and may make orders as to the attendance of registrars, assistants, or deputies; but the tenure of certain registrars of certain courts mentioned in Schedule A

(*x*) 19 & 20 Vict. c. 108, s. 80.

(*y*) 9 & 10 Vict. c. 95, s. 24; 19 & 20 Vict. c. 108, s. 8. By the last Act the title of the clerk of the court was changed to that of registrar.

(*z*) 9 & 10 Vict. c. 95, s. 25.

(*a*) 30 & 31 Vict. c. 142, s. 23.

(*b*) *Reg. v. Wake*, 8 E. & B. 384; 27 L. J. Q. B. 11.

(*c*) 19 & 20 Vict. c. 108, s. 8.

(*d*) 15 & 16 Vict. c. 54, s. 17, now repealed.

(*e*) 19 & 20 Vict. c. 108, s. 9.

(*f*) 9 & 10 Vict. c. 95, s. 13.

(*g*) 9 & 10 Vict. c. 95, s. 24.

See the provisions prohibiting him from being engaged for any suitor in any proceeding in the court, *post*.

(*h*) 13 & 14 Vict. c. 61, s. 3.

(*i*) 9 & 10 Vict. c. 95, s. 28; 29 Vict. c. 14, s. 11, *post*.

(*j*) 9 & 10 Vict. c. 95, s. 36. See *Pybus v. Gibb*, 6 E. & B. 902; 26 L. J. Q. B. 41, as to alteration of the condition of sureties by the passing of Acts after the date of the security.

to the 9 & 10 Vict. c. 95, is not affected by these provisions (*k*).

*Assistant clerks.* Such assistant clerks as may be necessary may be provided by the registrar (*l*).

*Deputy.* The registrar, with the approbation of the judge, may appoint a person qualified to be a registrar of the court to act for him at any time when he may be prevented by illness or unavoidable absence from performing his duties. In case of the registrar's inability to appoint a deputy, the judge may appoint one (*m*). Whenever the registrar is absent from the sitting of a court, the judge must appoint a deputy; and an entry of the appointment and the cause of such absence (if known) must be made on the minutes of the court (*n*).

The validity of the rule last cited has been doubted by the Court of Common Pleas in a case in which it was held—under circumstances which showed that a registrar was not present at the sitting of the court, but his assistant was, and half an hour afterwards the registrar himself was transacting business in the building—that there was no such absence as to justify the appointment of a deputy, so as to cast on the registrar the obligation to remunerate him (*o*). On the death or removal of a registrar who has not appointed a deputy, the judge may, for a period not exceeding three months, provisionally appoint a person whose status will be the same as that of a registrar, to discharge the duties of registrar (*p*). If a deputy be duly appointed, the death or removal of the registrar will not vacate the appointment, but he may continue to act until a successor has been appointed (*q*).

A deputy has all the powers and privileges, and must perform all the duties, and is subject to all the penalties, of a duly-appointed registrar (*r*).

*Office.* The registrar must keep an office at each place

(*k*) 13 & 14 Vict. c. 61, s. 4. Before this Act registrars were removable for inability and misbehaviour, and might question their removal by *quo warranto*; *Reg. v. Owen*, 15 Q. B. 476; 19 L. J. Q. B. 490.

(*l*) 9 & 10 Vict. c. 95, s. 24.

(*m*) *Ibid.*, s. 26.

(*n*) Order ii., rule 1.

(*o*) *Wetherfield v. Nelson*, L. R. 4 C. P. 571; 38 L. J. C. P. 220;

20 L. T. N. S. 366; 17 W. R. 651.

(*p*) 19 & 20 Vict. c. 108, s. 13, which see as to his remuneration.

(*q*) *Ibid.*, s. 12, which see as to his remuneration. See remarks on similar provisions as to judges' deputies, *ante*, p. 327.

(*r*) 9 & 10 Vict. c. 95, s. 26; 19 & 20 Vict. c. 108, ss. 12, 13; 30 & 31 Vict. c. 142, s. 20.

where the court of which he is registrar is holden, and it must be kept open every day, from 10 A.M. until 4 P.M., except on Christmas-day, Good Friday, and the Saturday next after, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, and except on such days as may be specially mentioned in an order for the purpose by the lord chancellor, and except also on Saturdays, when the office may be closed at 1 P.M. Where Saturday is the market-day of the town in which the court is holden, the office may not be so closed, but may be closed instead at 1 P.M. on some other day of the week; such day must be fixed by the judge, and may not be changed without his leave. An office need not be kept open in more than one place within the district, although the court is holden at more than one place, unless the lord chancellor otherwise orders. During the days on which in such district the court is holden in any place other than in the place where the registrar's office is situate, or on which an office is open at such other place, the office may be closed on such days in the place in which the office is required generally to be kept open (*s*). Moneys may be paid into court, under order of the judge, during office hours on any day when the office is open (*t*). Searches may be made, and moneys paid out of court, three days at least in each week (*u*).

*Duties.* The duties of registrars in relation to proceedings have been fully explained in the foregoing pages, and a recapitulation is not considered desirable. His duties in relation to the court and Treasury, as distinguished from those to individual suitors, will here be shortly noticed.

The registrar is required to register all orders and judgments of the court; to keep an account of all proceedings of the court; and to take charge of and keep an account of all court fees and fines payable or paid into court, and of all moneys paid into and out of court, and to enter an account of all such fees, fines, and moneys in a book belonging to the court, to be kept by him for that purpose; and from time to time, as directed by order of court, to submit his accounts to be audited or settled by the treasurer, where there is one (*v*), and by persons appointed by the Treasury, where there is no treasurer (*w*). He must keep the books in the

(*s*) Order i., rules 3, 4.

(*u*) Order ii., rule 9.

(*t*) Order ii., rule 8.

(*v*) 9 & 10 Vict. c. 95, s. 27.

(*w*) 29 Vict. c. 14, s. 2.

forms in the schedule; and every entry in such books must have a number prefixed, corresponding with the number of the plaint to which the entry relates (*x*). All the books of the court, including the bankers'-book and cash-book, must at all times be open to the inspection of the treasurer (*y*), or the person appointed by the Treasury. When he gives a certificate of a judgment or order, he must state on it the purpose for which it is required (*y y*).

In cases where there is a treasurer, the registrar must deliver quarterly to him a full account, in writing, of the fees received in court, and a like account of all fines levied by the court, and of the expenses of levying the same (*z*). It is presumed that he must account to the treasurer for them, as he is directed to do in regard to the equitable jurisdiction (*a*); but the provisions of the 12 & 13 Vict. c. 101, s. 7, directing him to pay over the moneys in his hands to the treasurer, are repealed by the Statute Law Revision Act, 1875; and the provisions contained in 9 & 10 Vict. c. 95, s. 44, enabling the Treasury to direct how moneys are to be applied, will probably now be relied on.

The enactment is retained, however, which provides that he must also once a year, or oftener if required by the Treasury, make out and send to the commissioners of audit an account of all sums paid to the treasurer, including unclaimed balances mentioned below (*b*).

In cases where there is no treasurer, the provisions named in the last paragraph are subject to the following further provisions. The Treasury may make rules for the keeping and rendering of accounts by the registrars or other officers, and for securing the payment of money in the hands of the registrars or other officers, into the Bank of England, to the account of the paymaster-general, to be carried by him to an account to be called "The County Courts Fund," out of which the Treasury may direct all necessary payments for the purposes of the courts to be made (*c*). The registrar must once a year, or oftener if required by the Treasury, make out and send to the commis-

(*x*) Order ii., rule 2.

(*y*) *Ibid.*, rule 11. See *Burridge v. Nicholetts*, 30 L. J. Ex. 145, 9 W. R. 145, for the circumstances under which it was held that the treasurer was justified in breaking open the registrar's

office and desks in order to get at the books.

(*y y*) Order xviii., rule 4.

(*z*) 9 & 10 Vict. c. 95, s. 41; 15 & 16 Vict. c. 54, s. 9.

(*a*) 28 & 29 Vict. c. 99, s. 13.

(*b*) 9 & 10 Vict. c. 95, s. 46.

(*c*) 29 Vict. c. 14, s. 5.

sioners of audit an account of all moneys paid over by him to the paymaster-general (*d*).

In the month of March in each year the registrar must make a list of moneys belonging to suitors in court, which have remained unclaimed for five years before the previous January, and put up a copy of it in the court-house and in his office. When the money has been unclaimed for six years from the date of the payment into court, it will be transferred to the general fund of the court, and no person will be entitled to claim it. But no time during which the person entitled to claim it has been an infant, or *feme covert*, or of unsound mind, or beyond seas, is included in the computation of time (*e*).

All registrars, in addition to their original duties, are required to perform the duties imposed upon them by the Act conferring an equitable jurisdiction upon county courts (*f*). When money is paid into court in any equitable proceedings, the registrar must, unless he is otherwise ordered by the court, invest the same in his name as registrar, within forty-eight hours, in a post-office savings bank established in the town in which the court is held, without restriction as to amount, and without the declaration of an ordinary depositor. The money may not be paid out except upon an authority addressed by the Treasury to the postmaster-general (*g*).

The registrars of courts having admiralty jurisdiction must also perform the duties incident to that jurisdiction.

*Future registrars to perform high bailiff's duties.* On any vacancy in the office of high bailiff, if the registrar was appointed after the passing of the Act (April 23, 1866), or if appointed previously, if he is willing to perform the duties of high bailiff, no successor to the high bailiff may be appointed, unless the lord chancellor, with consent of the Treasury, otherwise determines; but the registrar must perform the duties of high bailiff, and be responsible for his acts, and those of his officers, as a high bailiff is now responsible. If a registrar appointed before the Act is unwilling to perform the duties of high bailiff, any person who may be appointed to succeed to the high bailiff's duties will, unless the lord chancellor, with such consent as above, otherwise directs, cease to hold office when the registrar ceases to hold his office (*h*). Any registrar so invested

(*d*) 29 Vict. c. 14, s. 10.

(*f*) 28 & 29 Vict. c. 99, ss. 12, 13.

(*e*) 9 & 10 Vict. c. 95, s. 112.

(*g*) 30 & 31 Vict. c. 142, s. 26.

(*h*) 29 Vict. c. 14, s. 12.



with the powers and authorities of a high bailiff will also be invested with the powers and authorities possessed by the high bailiff to the performance of whose duties he may succeed (*i*).

*Remuneration.* Every registrar appointed after April 23, 1866, is to be paid by salary, regulated upon the following principle:—If the plaints entered in his court do not exceed two hundred from January 1 to December 31, inclusive, the salary for that year will be 100*l.*; if they exceed two hundred, the salary will be increased by sums of 4*l.* for every twenty-five additional plaints up to six thousand inclusive; and such salaries will be inclusive of all salaries to the clerks employed by the registrars in the business of their respective courts. In the courts in which the plaints exceed six thousand, the amount of salary must be fixed by the Treasury, with the consent of the lord chancellor; but it may in no case exceed 700*l.* a year (*j*).

In addition to these salaries, they are entitled to certain fees in bankruptcy proceedings; also to receive for their own use such fees as may be authorised by the Treasury, with the consent of the lord chancellor, to be taken under the jurisdiction given to county courts by the 30 & 31 Vict. c. 142. The Treasury may, however, with such consent as above, order that, instead of receiving such fees, they shall be paid a fixed or fluctuating allowance, in which case they will have to account for and pay over the fees (*k*). So they are entitled to receive for their own use, in addition to such salary, such fees as may be authorised by the Treasury, with the consent of the lord chancellor, under the jurisdiction in equity under the 28 & 29 Vict. c. 99 (*l*), and also for proceedings under the Friendly Societies Act, 1875 (*m*). So the registrars of courts having admiralty jurisdiction are entitled to receive for their own use such fees as may be directed by general orders (*n*). And every registrar invested with the powers and duties of a high bailiff, under the 29 Vict. c. 14 (*o*), will be entitled to receive, in addition to his salary as registrar, a sum equal to one-fifth part of such salary, together with such sum or allowances for service and execution of process as the Treasury may determine (*p*).

The remuneration of registrars appointed before April 23,

(*i*) 30 & 31 Vict. c. 142, s. 21.

(*j*) 29 Vict. c. 14, s. 14.

(*k*) 30 & 31 Vict. c. 142, s. 30.

(*l*) 28 & 29 Vict. c. 99, s. 12.

(*m*) 38 & 39 Vict. c. 60, s. 34.

(*n*) 31 & 32 Vict. c. 71, s. 17.

(*o*) *Ante*, p. 334.

(*p*) 29 Vict. c. 14, s. 12.



1866, is determined by the earlier statutes; but such registrars are also entitled to the additional fees in bankruptcy, equity, admiralty, and under the 30 & 31 Vict. c. 142, and for performing the duties of high bailiff, as mentioned above. The provisions applying to such registrars are that they shall be paid by salary (*q*), which is to include all salaries of clerks, and is in no case to exceed 700*l.* a year. The salary of any registrar acting in a similar capacity before the 9 & 10 Vict. c. 95, in any court mentioned in Schedule A to that Act, is not (exclusive of salaries of clerks) to be less than a certain average amount, based upon his former fees and emoluments (*r*).

The salaries of registrars and high bailiffs are in all cases to be paid out of the produce of the fees of the court (*s*); and if insufficient, the deficiency must be made good out of money to be provided by Parliament. Any surplus must be paid over to the Consolidated Fund (*s*).

**HIGH BAILIFF.** It has been already shown (*t*) that upon any vacancy in the office of high bailiff, no new appointment may be made if the registrar is willing to perform his duties. If he is unwilling to do so, then the judge may appoint one; but any person so appointed will cease to hold his office on the registrar vacating his office, unless the lord chancellor, with the consent of the Treasury, otherwise orders (*u*). And subject to the provisions above mentioned, on the death or removal of a high bailiff, the judge may, for a period not exceeding three months, provisionally appoint a person to discharge the duties of high bailiff (*v*). Originally, one or more high bailiffs might have been appointed by the judge to each court (*w*), and a person might have been high bailiff to more than one court. It is, however, now provided that no person shall be appointed high bailiff of more than one court (*x*). The acceptance of the office of registrar by a high bailiff vacates his office of high bailiff (*y*). A high bailiff is required to give security (*z*). He may be removed, except in a few cases, under the same provisions which apply to registrars (*a*).

(*q*) See the section for the scale.

(*r*) 19 & 20 Vict. c. 108, s. 82.

(*s*) *Ibid.*, s. 84.

(*t*) *Ante*, p. 334.

(*u*) 9 & 10 Vict. c. 95, s. 31; 29 Vict. c. 14, s. 11.

(*v*) 19 & 20 Vict. c. 108, s. 16, which see as to his remuneration.

(*w*) 9 & 10 Vict. c. 95, s. 31. See, as to conjoining offices, *post*.

(*x*) 29 Vict. c. 14, s. 13.

(*y*) 38 & 39 Vict. c. 50, s. 9.

(*z*) 9 & 10 Vict. c. 95, s. 36. See *Pybus v. Gibb*, *ante*, p. 330.

(*a*) 13 & 14 Vict. c. 61, s. 4, *ante*, p. 330. See, as to Westminster and Southwark, 22 Vict. c. 8, s. 1.

Any person appointed temporarily to the office of high bailiff, or performing his duties under the provisions above mentioned, will have all the rights and powers, and be subject to the same liabilities and responsibilities, as a high bailiff (*b*). When the high bailiff is himself the defendant in his own court, a special bailiff may be appointed by the court to levy execution (*c*).

*Bailiffs.* The high bailiff may, by writing under his hand, appoint a sufficient number of able and fit persons, not exceeding such number as may be allowed by the judge, to be bailiffs to assist him; and he may, at his pleasure, dismiss them and appoint others. The judge also may suspend or dismiss any bailiff (*d*). The death or removal of the high bailiff does not vacate their offices, and they may continue to act until dismissed by his successor or by the judge. Their wages are payable by the high bailiff, and during any such interval as above, they will be paid out of the salary and allowances attached to the office of high bailiff (*e*). Every bailiff duly appointed by a high bailiff, or a registrar performing the duties of high bailiff, may serve or execute any process which by any Act is directed to be served or executed by a high bailiff, unless otherwise expressly provided against (*f*). As to when they may act as brokers or appraisers, for the purpose of selling or valuing goods taken in execution, see 12 & 13 Vict. c. 101, s. 10, *ante*, p. 228.

*Office.* The high bailiff of courts in which the number of complaints entered exceeds six thousand in any one year, must keep open his office during the same hours as the registrar (*g*).

*Duties.* The high bailiff must attend every sitting of the court, unless his absence is allowed for reasonable cause by the judge (*h*). He must transmit to the registrar in writing the cause of his absence, and the registrar must enter it on the minutes of the then or next court (*i*). He must keep books and make returns in the form in the schedule (*j*).

He must himself, or by his bailiffs, serve all summonses and orders, and execute all warrants, precepts, and writs

(*b*) 19 & 20 Vict. c. 108, s. 16;  
29 Vict. c. 14, s. 11.

(*c*) *Bellamy v. Hoyle*, L. R.  
10 Ex. 220; 44 L. J. Ex. 169.

(*d*) 9 & 10 Vict. c. 95, s. 31.

(*e*) 19 & 20 Vict. c. 108, s. 14.

(*f*) 30 & 31 Vict. c. 142, s. 22.  
See *Bellamy v. Hoyle*, *supra*.

(*g*) Order ii., rule 19.

(*h*) 9 & 10 Vict. c. 95, s. 33.

(*i*) Order ii., rule 16.

(*j*) *Ibid.*, rule 17.

issued out of court (*k*) : for this purpose he must attend at the office of the registrar once at least every day during the hours when it is open, and verify all processes delivered to him, so as to enable him to prove their correctness (*l*). He must enter in the "Order Book" all orders for payment of money and costs, or both, delivered to him by the registrar, and he must, within twenty-four hours (*m*), send them by post or otherwise to the parties on whom they are to be served, and enter in the book the date on which he causes them to be posted (*n*). He must also send in the above manner orders of adjournment when they are ordered to be served (*o*).

He must also, in addition to the process of his own court, serve process sent to him for service from other county courts, as soon as practicable (*p*). As to service, endorsement, and affidavit of service, and notice of service or non-service, and proof of service, see *ante*, pp. 119-124; and as to the penalty for neglecting to serve the summons of another county court, see *post*, pp. 345, 346. As to delivering a list of the particulars of service or non-service of summonses before each court, see *ante*, p. 123; and as to his duties as to warrants of execution, see *ante*, p. 223; and as to non-execution in a foreign district, see *ante*, p. 229; and as to the penalty in case of neglect to levy, see *post*, p. 346; and as to paying over money received, see *ante*, p. 230. The high bailiff must at all reasonable times give information to suitors as to the execution or non-execution of warrants (*q*).

*As to sale of personal property.* Where any personal property is directed to be sold by auction, detained, or preserved, the high bailiff shall, if the court so direct, superintend such sale, detention, or preservation; and where the property is to be sold by private contract, he shall carry out the directions of the court in respect of such sale, but this rule shall not apply to an execution issued under section 95 of the County Courts Act, 1846 (*r*).

*Possession.* Where a warrant shall direct the high bailiff to detain and preserve any goods or chattels, he shall take and retain possession thereof until further order be made by the court thereon (*s*).

(*k*) 9 & 10 Vict. c. 95, s. 33.

(*l*) Order ii., rule 18.

(*m*) Order xviii., rule 2.

(*n*) Order ii., rule 28.

(*o*) Order xviii., rule 2.

(*p*) 9 & 10 Vict. c. 95, s. 61; order ii., rule 20.

(*q*) Order ii., rule 29.

(*r*) *Ibid.*, rule 32. See order xviii., rule 15.

(*s*) Order ii., rule 33.

*Where possession taken until security given.* Where a warrant shall direct the high bailiff to take possession of any goods or chattels until good security be given by some party for the safe keeping, or for the payment of the value of the same in default of such safe keeping, but shall not specify the amount of such security, he shall make or cause to be made an inventory or appraisement of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisement or sufficient security, to be approved by the registrar, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be re-delivered to him or held to abide the order of the court. If the warrant shall specify the amount of security, no less deposit or security shall be sufficient (*t*).

*Responsibility.* High bailiffs and bailiffs in the execution of their duties must conform to the general rules of practice, and, subject to them, to the order and direction of the judge. Every high bailiff is responsible for all the acts and defaults of himself, and of the bailiffs appointed to assist him, in the same manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers\* (*u*).

The high bailiff must deliver quarterly to the treasurer, in such form as he, by direction of the Treasury, may require, a full account in writing of the fees from time to time received by him (*v*).

*Remuneration.* The fees chargeable for the duties performed by high bailiffs are regulated by the Treasury under the powers already noticed (*w*). They are paid by salary fixed and regulated by the Treasury, with the consent of the lord chancellor. In addition, they are entitled to receive, for their own use, the fees appointed for keeping possession of goods under executions. With the consent of the lord chancellor they may be paid partly by salaries and partly by allowances for the execution of warrants, and for mileage on the service or execution of any process.

(*t*) Orderii., rule 34. See p. 166.

(*u*) 9 & 10 Vict. c. 95, s. 33. See *post*, p. 347, actions against officers.

(*v*) 15 & 16 Vict. c. 54, s. 9. Where there is no treasurer, it is

conceived that he must deliver the account to the person appointed by the Treasury: 29 Vict. c. 14, s. 2.

(*w*) See *ante*, p. 190, and *post*, p. 344.

The remuneration to which they are thus entitled includes all payments to bailiffs (*x*).

In addition to the above salaries and fees, the high bailiffs are entitled to receive, for their own use, such fees as may be authorised by the Treasury, with the consent of the lord chancellor, to be taken by them for duties performed under the jurisdiction in equity given by the 28 & 29 Vict. c. 99 (*y*), and under the Friendly Societies Act, 1875 (*z*). They are also entitled to the fees allowed for duties performed by them under the jurisdiction given by the 30 & 31 Vict. c. 142. The Treasury may, however, with the consent of the lord chancellor, order that instead of fees they shall receive a fixed or fluctuating allowance, in which case the fees taken must be accounted for and paid over as may be directed by the Treasury (*a*).

**TREASURER.** The original Act empowered the Treasury to appoint persons to be treasurers of the various county courts, and to remove them, and to appoint others in their places (*b*). Treasurers appointed under these provisions were paid by salary fixed by the Treasury, the same being payable out of the Consolidated Fund (*b*); but this section is now repealed by the Statute Law Revision Act, 1875. They are required to give security (*c*).

A recent statute provides for the gradual abolition of the office of treasurer; and when any treasurer appointed under the above provisions dies, resigns, or is removed, the vacancy is not to be filled up (*d*). The accounts of the registrar and other officers of the court are then to be examined by persons appointed by the Treasury (*e*), and moneys in the hands of officers of the court are to be paid into the Bank of England to the account of the paymaster-general, to be carried by him to an account to be called "The County Courts' Fund," out of which all necessary payments for the purposes of the courts are to be made (*f*). Provision is made for permitting present treasurers to retire on superannuation in certain cases (*g*). If the Treasury employ as the person to examine the accounts

(*x*) 19 & 20 Vict. c. 108, s. 83.  
As to the fund out of which the salaries are payable, see *ante*, p. 336.

(*y*) 28 & 29 Vict. c. 99, s. 12.

(*z*) 38 & 39 Vict. c. 60, s. 34.

(*a*) 30 & 31 Vict. c. 142, s. 30.

(*b*) 9 & 10 Vict. c. 95, s. 23,  
which see for the proviso affecting

certain particular courts; and see *post*, p. 341, for the provisions against conjoining offices of treasurer, registrar, &c.

(*c*) 9 & 10 Vict. c. 95, s. 36.

(*d*) 29 Vict. c. 14, s. 1.

(*e*) *Ibid.*, s. 2.

(*f*) *Ibid.*, s. 5.

(*g*) *Ibid.*, s. 3.

a person who has been clerk to a treasurer, he will, after certain service, be deemed a civil servant, and be entitled to superannuation (*h*).

*Duties.* The duties of present treasurers are to audit and settle the accounts of the officers of the court, quarterly or oftener, to receive from them the balance of the moneys received, and from time to time to account for and pay over the balances in their hands, as directed by the Treasury (*i*).

*Registrars or other officers not to be agents or sureties for suitors.* No officer of the court may, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for any party in any proceeding in the court (*j*). An assistant registrar is an officer within this section (*k*). The penalty for non-observance of the section is 50*l.*, recoverable by any person in the high court by action of debt or on the case (*l*).

No officer of the court, and no partner or clerk of such officer, may, on account of suitors, sign the ledger or any other book, or receive money, or otherwise act as an agent for that purpose (*m*). And no officer of the court, or practising solicitor, or clerk of such solicitor, may become surety in any case where, by the practice of the court, it is required (*n*).

*Conjoining offices.* Neither the registrar nor his partner, nor any person in the service of the registrar or his partner, may act as treasurer; nor may the treasurer, his partner or clerk, nor any person in the service of the treasurer or his partner, act as registrar or high bailiff; nor may the high bailiff, his partner or clerk, nor any person in the service of the high bailiff or his partner, act as treasurer (*o*). The penalty for non-observance of these provisions is 50*l.*, recoverable by any person in the high court by action of debt or on the case (*p*).

*Corruptly exacting fees.* Any officer employed in putting the Act, or any of its powers, into execution, who wilfully

(*h*) 29 Vict. c. 14, s. 4.

(*i*) 9 & 10 Vict. c. 95, ss. 42, 44.

(*j*) *Ibid.*, s. 29.

(*k*) *Ackroyd v. Gill*, 5 E. & B. 808; 25 L. J. Q. B. 111. See also *Warden v. Stone*, 7 E. & B. 603; 26 L. J. Q. B. 200, as to what

was held not to be a proceeding, under a repealed statute.

(*l*) 9 & 10 Vict. c. 95, s. 30.

(*m*) Order ii., rule 12.

(*n*) Order xxx., rule 6.

(*o*) 9 & 10 Vict. c. 95, s. 28; 29 Vict. c. 14, s. 11; 38 & 39 Vict. c. 66.

(*p*) 9 & 10 Vict. c. 95, s. 30.



and corruptly exacts, takes, or accepts any fee or reward whatsoever, except such as are appointed, for or on account of anything done or to be done by virtue of the Acts, or on any account whatsoever, relative to putting the Acts into execution, will, on proof before the court, and in case of a registrar, treasurer, or high bailiff, on allowance of the finding of the court by the lord chancellor, be for ever incapable of serving or being employed in any office of profit or emolument under the Acts, and also liable in damages, as hereafter noticed (*q*).

PART II. REGULATION OF PRACTICE, COSTS, AND FEES.—  
INTERPRETATION OF ACTS AND RULES.—EVIDENCE OF  
PROCEEDINGS.

*Rules of practice.* The practice of the courts is regulated by rules framed under the 19 & 20 Vict. c. 108, s. 32. The previous rules had been framed under the 9 & 10 Vict. c. 95, s. 78, and also under the 12 & 13 Vict. c. 101, s. 12. These sections are now expressly repealed, but an exception of some importance in the former is still retained (*r*). The exception referred to is the concluding paragraph of the 9 & 10 Vict. c. 95, s. 78, which enacts that “in any case not expressly provided for herein, or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts.” The Acts being read together as one Act, it is conceived that this provision still obtains, and in the foregoing pages several instances of its utility have been pointed out (*s*). The present rules, however, provide that no practice shall prevail, except such as is provided by the rules, and that no matter shall be added to or taken away from any form in the schedule whereby any obligation shall be imposed on any suitor to which he is not liable under statute or the rules (*t*).

The present rules are framed under the 19 & 20 Vict. c. 108, s. 32, by which the lord chancellor is empowered to appoint five county court judges to frame rules and orders for regulating the practice of the courts, and forms

(*q*) 9 & 10 Vict. c. 95, s. 117, and *post*, p. 351.

(*r*) 38 & 39 Vict. c. 66. See *Bellamy v. Hoyle*, L. R. 10 Ex. 220; 44 L. J. Ex. 169.

(*s*) *Ante*, pp. 107, 169.

(*t*) Order xxxvii., rule 53. As will be seen, however, the rules cannot impose an obligation not authorised by statute.



of proceedings, and from time to time to amend such rules, orders, and forms. They must be submitted to the lord chancellor, certified under the hands of three or more of the five judges, and the lord chancellor may allow, disallow, or alter them (*u*). The authority which the judges so appointed possess to frame such a complete code as is now prescribed, might, it is conceived, have been derived from the 38 & 39 Vict. c. 50, s. 8, alone; but the 19 & 20 Vict. c. 108, s. 5, 28 & 29 Vict. c. 99, s. 16, 30 & 31 Vict. c. 142, s. 27, relating to rules of procedure, are still extant, or at least not expressly repealed.

It seems that the rules of practice framed under these provisions must not be inconsistent with or repugnant to the provisions of the various Acts of Parliament. The rules formerly made under the 12 & 13 Vict. c. 101, s. 12, were, under that section, to have the same force and effect as if they had been enacted by authority of Parliament, but it was nevertheless held that a rule providing that seven days' notice should be given of an intended application for a new trial did not take away the discretion which the 9 & 10 Vict. c. 95, s. 89, gave the judge to grant a new trial, and that he might grant it though the rule had not been complied with (*v*). So a rule under the 19 & 20 Vict. c. 108, s. 32, which provided that an appeal-case should be presented for signature at the first court held after twelve clear days from the date of the judgment, was held not to take away the appellant's right to have the case signed at a later day (*w*). In *Irving v. Askew* (*x*), it is said by Hannen, J., delivering the judgment of the court, "If the rule were really repugnant to the provisions of the Act of Parliament, I should think that the rule, though made under the powers of the Act, would not override its enactments." So a rule similar to order ii., rule 1, of the present rules has been doubted by the judges, and an opinion has been expressed that it is *ultra vires* (*y*).

In the foregoing pages, assuming that a rule which is inconsistent with or repugnant to the provisions of the

(*u*) 19 & 20 Vict. c. 108, s. 32. See the present rules in Appendix D. They came into operation on November 2, 1875.

(*v*) In *re Carter*, *Carter v. Smith*, 4 E. & B. 696; 24 L. J. Q. B. 141.

(*w*) *Hacking v. Lee*, 2 E. & E. 906; 29 L. J. Q. B. 204.

(*x*) *Irving v. Askew* (2), L. R.

5 Q. B. 208, 211; 39 L. J. Q. B. 118.

(*y*) *Wetherfield v. Nelson*, L. R. 4 C. P. 571; 38 L. J. C. P. 220; 20 L. T. N. S. 366; 17 W. R. 651. See also an example of an invalid rule of Quarter Sessions, *Reg. v. Pawlett*, L. R. 8 Q. B. 491; 22 W. R. 196; 29 L. T. N. S. 390.

Acts, is *ultrà vires*, some instances have been shown in which there is reason to doubt the validity of existing rules (z).

*Regulation of costs.* These are now regulated by the 19 & 20 Vict. c. 108, s. 33, 28 & 29 Vict. c. 99, s. 17, 30 & 31 Vict. c. 142, s. 15, and the 38 & 39 Vict. c. 50, s. 8, by which the county court judges above mentioned are empowered to frame a scale of costs and charges to be paid to counsel and attorneys in all proceedings, and from time to time to amend such scale. The scales have to be submitted to the lord chancellor, certified under the hands of three or more of the judges, and the lord chancellor may allow, or disallow, or alter them (a). The present scales authorised as above are now in force as from November 2, 1875 (b).

*Regulation of fees.* By the 19 & 20 Vict. c. 108, s. 78, the fees to be taken in proceedings in county courts were directed to be such as were specified in Schedule C to the above Act; and a subsequent section empowered the Treasury from time to time, with the consent of the lord chancellor, to lessen or increase the fees, and to order new fees to be paid in any proceedings then or afterwards authorised to be taken in county courts. But every alteration in the scale of fees must be notified to both Houses of Parliament within ten days from the commencement of the session next after the alteration (c). Under these provisions, coupled with the 28 & 29 Vict. c. 99, ss. 12, 13, 37 & 38 Vict. c. 50, s. 7, the scales of fees now in force have been prescribed (d). A table of all fees is directed to be posted in some conspicuous place in every court-house and in every registrar's office (e).

*Interpretation of Acts and rules.* The several County Courts' Acts of 1846, 1849, 1850, 1852, 1856, 1858, 1859, 1865, 1866, 1867, and 1875 are to be construed together as one Act (f). The interpretation of the terms introduced into the Acts and rules will be found in the 9 & 10 Vict. c. 95, s. 142, and in the interpretation clause to the rules. It may be mentioned that the words "county court" mean any court holden under the County Courts' Acts, and also the City of London Court (g).

(z) *Ante*, pp. 147, 154, 184, 185.

(a) 19 & 20 Vict. c. 108, s. 33.

(b) See Appendix I.

(c) 19 & 20 Vict. c. 108, s. 79.

(d) See Appendix I.

(e) 19 & 20 Vict. c. 108, s. 78.

(f) 30 & 31 Vict. c. 142, s. 34;

28 & 29 Vict. c. 99, s. 21; 38 & 39

Vict. c. 50, s. 13.

(g) 30 & 31 Vict. c. 142, s. 35;

9 & 10 Vict. c. 95, s. 142. See

*ante*, p. 324.

*Evidence of proceedings.* The registrar is required to cause a note of all complaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the court, to be entered in a book belonging to the court which must be kept at the offices of the court. The entries in the book, or a copy sealed with the seal of the court, and purporting to be signed and certified as a true copy by the registrar, must at all times be admitted in all courts and places as evidence of the entries and of the proceeding referred to, and of the regularity of such proceeding, without further proof (*h*). The book itself, or a certified copy of the entries, is the best, and therefore the only evidence of proceedings (*i*). The entries in the book are conclusive, and the judge himself cannot contradict the entries by his own testimony (*j*). On an indictment for a common assault upon a bailiff made by a debtor whom he was arresting under a warrant good on its face, it was held that it was not necessary to prove the proceedings in the county court, but that proof of the warrant was sufficient to justify the arrest (*k*).

### PART III. ACTIONS AGAINST AND PROCEEDINGS RELATING TO OFFICERS OF THE COURT.

In the fifth and sixth parts of the first chapter of this book it has been pointed out what remedies are available against a judge or other officer of the court for usurping a jurisdiction which does not belong to him, and also for compelling him to perform his duty when he neglects to do so. The remedy in the latter case has been shown to be by a process substituted for that of mandamus, but in certain cases of neglect of duty by bailiffs a more summary and speedy remedy has been provided.

*Neglect of bailiff of foreign district to make return.* The first of these cases is where the high bailiff of a different court from that in which a summons is issued, to whom the summons has been sent for service (*ante*, p. 228), neglects

(*h*) 9 & 10 Vict. c. 95, s. 111.

(*k*) *Reg. v. Davis*, 8 Cox, C. C.

(*i*) *Rea v. Rowland*, 1 F. & F. 72.

496; 30 L. J. M. C. 159. See

(*j*) *Dews v. Ryley*, 2 L. M. & P.

*ante*, p. 244.

544; 20 L. J. C. P. 264.

to make a return in the manner before described. If he neglects to make a return of an ordinary summons eight clear days, or of a judgment summons three clear days before the return-day to the registrar of the court issuing the summons, the judge of the latter court may, on evidence of such summons having been posted to the high bailiff of the foreign court, direct the high bailiff to have notice that he will, at a court to be named, unless the high bailiff show cause to the contrary, make an order directing the bailiff to pay to the plaintiff such sum as the judge may think reasonable, as compensation for the loss of time and expense which may have been caused to the plaintiff by such neglect. And if on the day mentioned the judge shall make any order for payment by such high bailiff, a memorandum of the order must be made in the minute-book. The registrar of the home court must then send notice of the order to the high bailiff (*l*), and if he does not remit to him the sum directed to be paid, the registrar must transmit to the treasurer of the foreign court a copy of the notice, and certify upon it the neglect of the bailiff to pay the money as required, and the treasurer must deduct such sum from any payment he may afterwards make to the high bailiff (*m*).

*Neglect of bailiff to levy.* Another case in which a summary remedy is provided is where the bailiff neglects to make a levy, and damage consequently ensues to the plaintiff. It is provided that, in case any bailiff of the court employed to levy any execution against goods and chattels, by neglect, connivance, or omission, loses the opportunity of levying such execution, then, upon complaint of the party aggrieved, and proof on oath of any credible witness to the satisfaction of the court, the judge must order the bailiff to pay such damages as it appears the plaintiff has sustained; but the damages must not in any case exceed the amount for which the execution issued. The bailiff will be liable to pay the amount so ordered, and on his refusal to pay and satisfy the same, after demand thereof, payment may be enforced in the same manner as a judgment of the court is enforced (*n*).

*Interpleader.* The damages which may be claimed against

(*l*) Form 43.

(*m*) Order ii., rules 24 and 25.

(*n*) 9 & 10 Vict. c. 95, s. 115.

No rule provides as to how these and the former proceedings are

to be commenced. It would appear, however, that they may be commenced by plaint. See *Mayer v. Burgess*, 4 E. & B. 655; 24 L. J. Q. B. 67.

bailiffs under the provisions relating to interpleader proceedings have been already explained (*ante*, p. 232).

*Actions for acts done by officers.* The provisions relating to the omissions of officers having been referred to, reference will now be made to the provisions which relate to actions commenced against officers of the county courts for acts done by them. The penalty recoverable from an officer of the court acting as agent for a suitor has been mentioned (*ante*, p. 341). Special provision has been made for actions for damages arising out of any act done under a warrant under seal of the court, and particular notice should be taken of it, in order to prevent the wrong joinder of the bailiff as defendant (see *post*, p. 351).

A judge is not answerable at common law, or under the County Courts' Acts, in an action for any act done or word spoken by him in his judicial capacity in the exercise of his jurisdiction (*o*); so an action will not lie against him for an act done by him in the exercise of his jurisdiction, however irregularly or corruptly (*p*); nor will it lie for words spoken maliciously whilst sitting as judge (*q*); nor is he answerable for the wrongful act of his officer done under colour of process within the jurisdiction of the court (*r*). It is otherwise, however, when the judge has no jurisdiction; he is then responsible for acts done by his officers by his command and authority. So where a judge committed a debtor to prison and entered the order in his book, and in pursuance of the order the debtor was lodged in gaol, the judge was held responsible in an action of trespass, on its being shown that he had no jurisdiction to make the order (*s*). So, it is conceived, he would be responsible for a commitment for contempt of court not within his jurisdiction (*t*). The registrar, being a mere ministerial officer, is not liable for signing an order of commitment in conformity with an order of the judge, even though such order be bad (*u*).

The high bailiff is responsible for all the acts and defaults of himself and his bailiffs, in the same manner that a

(*o*) *Floyd v. Barker*, 12 Rep. 23; *Fray v. Blackburn*, 3 B. & S. 576; *Scott v. Stansfield*, L. R. 3 Ex. 220; 37 L. J. Ex. 155; 16 W. R. 911; 18 L. T. N. S. 572.

(*p*) *Johanson v. Cooke*, Mich. Term, 1872, Q. B. 17 S. J. 30.

(*q*) *Scott v. Stansfield*, *supra*.

(*r*) *Houlden v. Smith*, 11 Q. B. 841; 19 L. J. Q. B. 170.

(*s*) *Houlden v. Smith*, *supra*; and see *ante*, p. 77.

(*t*) See *Reg. v. Lefroy*, L. R. 8 Q. B. 134; 28 L. T. N. S. 132; S. C., *Ex parte Jolliffe*, 42 L. J. Q. B. 121; 21 W. R. 332.

(*u*) *Dews v. Ryley*, 11 C. B. 434; 20 L. J. C. P. 264.

sheriff is responsible for the acts and defaults of himself and his officers (*v*). If a trespass be committed in the execution of process the high bailiff will be responsible, as where execution is levied upon the wrong person (*w*). And where an under bailiff left a man in possession of goods taken under an execution, and he sold them without waiting the five days (*ante*, p. 227), the high bailiff was held liable (*x*). To make him responsible, however, the act done must be one which may be done under colour of the process and authority; so, where a warrant issued against a defendant and the bailiffs broke into the premises of a third person, and on his resisting they took him into custody under the provisions against assaulting bailiffs (*y*), it was held that the high bailiff was responsible for the breaking only, and not for the assault, the power to arrest not being exercised under colour of the process, but under the special power to the officer obstructed given by the Act of Parliament (*z*). Where process is sent for execution to a foreign court and is sealed by the court there, it appears that the high bailiff of the foreign court, and not of the home court, must be sued for a trespass committed under colour of the process (*a*).

The high bailiff is responsible where process is served or executed upon a wrong person, resulting in an arrest or other trespass; but it is conceived that such person must not by his conduct contribute to the mistake, or cause the officer to continue the execution of process against him, or he will not be allowed to recover damages for the trespass (*b*); as if, for instance, he failed to give notice to the officer of the mistake, and he was afterwards arrested (*c*), or if all the process having been by mistake served upon him, he neglected to appear and to deny his liability (*d*). If, however, before execution, he did deny his liability, the high bailiff would be responsible though judgment had been suffered by default (*e*). So if process were executed upon the wrong person through his representation that he was

(*v*) 9 & 10 Vict. c. 95, s. 33.

(*w*) See *infra*.

(*x*) *Burton v. Legros*, 34 L. J. Q. B. 91.

(*y*) *Post*, p. 354.

(*z*) *Smith v. Pritchard*, 8 C. B. 565; 19 L. J. C. P. 53.

(*a*) See *Smith v. Pritchard*, *supra*.

(*b*) *Kelly v. Lawrence*, 3 H. &

C. 1; 33 L. J. Ex. 197; *Davies v. Jenkins*, 11 M. & W. 755; *Walley v. M'Connell*, 13 Q. B. 911; 19 L. J. Q. B. 162.

(*c*) See *per Cockburn, C.J., De Mesnil v. Dakin*, L. R. 3 Q. B. 18, 24; S. C., 37 L. J. Q. B. 42; 16 W. R. 145.

(*d*) See *Davies v. Jenkins*, *Walley v. M'Connell*, *supra*.

(*e*) *Kelly v. Lawrence*, *supra*.



the person named in the order or warrant, the high bailiff would not be responsible (*f*); but he would be responsible if, after notice of the misrepresentation, he refused to withdraw or discharge the person from custody (*g*).

If a person sued by a wrong name, but, being the right person served with process, omits to take his objection in the way required by law, he acquiesces in the process and cannot retract it (*h*). And where a debtor paid a judgment debt due to the plaintiff instead of paying it into the county court, as provided by the County Courts' Acts (*i*), and through ignorance of the payment a warrant was executed against the judgment-debtor, the officers of the court were held not to be responsible (*j*).

If the plaintiff, or his solicitor, merely institutes proceedings which he is entitled to commence, he does not become a trespasser, though the officer of the court may in execution of the process commit a trespass (*k*), for the high bailiff or other officer is not the agent of the plaintiff so long as he does not personally interfere (*l*); but if he does interfere, as by accompanying the officer, and pointing out the person to be arrested, who proves to be the wrong one, he becomes personally liable (*m*). The plaintiff in an action in the county court wrote to a high bailiff: "The plaintiff in this action has some reason to believe in the possibility of a third person claiming the goods at the address given on the back of the execution. He will, however, contest any claim that may be made, and he desires that the high bailiff at Liverpool should be so informed, that the officer who levies may not in any way be deterred from putting the warrant in force by reason of any party setting up a claim." The officer having seized the goods of a wrong person as well as those of the judgment-debtor, an action was brought against the person writing the above letter. It was, however, held to amount merely to a direction to the officer to do his duty, and not such an interference as to render him personally liable for the trespass (*n*). Where

(*f*) *Price v. Harwood*, 3 Camp. 108; *Dunstan v. Paterson*, 2 C. B. N. S. 495; 26 L. J. C. P. 267.

(*g*) *Dunstan v. Paterson*, *supra*.

(*h*) *Fisher v. Magnay*, 5 M. & C. 778.

(*i*) See *ante*, p. 246.

(*j*) *Davis v. Fletcher*, 2 E. & B. 217; 22 L. J. Q. B. 429.

(*k*) See *Kinning v. Buchanan*, 8 C. B. 271; 18 L. J. C. P. 332;

*Abley v. Dale* (2), 20 L. J. C. P. 233; 11 C. B. 378; *The Marshalsea Case*, 10 Rep. 68 b, 76 a.

(*l*) *Wilson v. Tumman*, 6 M. & Gr. 236; *Whitmore v. Greene*, 13 M. & W. 104; *Woollen v. Wright*, 1 H. & C. 554; 31 L. J. Ex. 513.

(*m*) *Walley v. Mc'Connell*, 13 Q. B. 911; 19 L. J. Q. B. 162.

(*n*) *Cronshaw v. Chapman*, 31 L. J. Ex. 277; 10 W. R. 323.



there has been no personal interference by the judgment-creditor, his adoption and ratification of the officer's acts *after* a trespass has been committed will not render him liable for it (*o*).

*Informality of proceedings.* A distress made for any money levied by virtue of the County Courts' Acts will not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto. And the party distraining will not be deemed a trespasser *ab initio*, on account of any irregularity which may afterwards be committed by the party distraining; but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case (*p*).

No officer of a county court in executing any warrant of a county court, and no person at whose instance any such warrant may be executed, will be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it; but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof; and in such action he will recover no costs unless the damages awarded exceed 40s. (*q*).

*Warrant to recover small tenement* (*ante*, p. 286). No action or prosecution may be brought against the judge, or the registrar by whom any warrant may be issued under the provisions already explained relating to the recovery of small tenements, or against any bailiff or other person by whom it may be executed, or the summons affixed, for issuing, or executing such warrant, or affixing such summons, on the ground that the person by whom the same was sued out had not lawful right to the possession of the premises (*r*).

*Extortion by officers.* Any officer of the court, acting under colour or pretence of the process of the court, guilty of extortion or misconduct, or of not duly paying or accounting for money received by him under the authority of the Acts, may be dealt with by the judge in a summary

(*o*) *Wilson v. Tumman*, *Woollen v. Wright*, *supra*.

(*p*) 9 & 10 Vict. c. 95, s. 137.

(*q*) 19 & 20 Vict. c. 108, s. 60.

(*r*) 9 & 10 Vict. c. 95, s. 121.

manner; and all necessary parties and witnesses may be required by the judge to attend. And the judge may make such order for repayment of money extorted, or for due payment of money received as aforesaid, and for payment of damages and costs, as he thinks just. He may also impose a fine not exceeding 10*l.* for each offence. Payment of money so ordered to be paid may be enforced by such means as are provided for enforcing a judgment (*s*).

*Officers corruptly taking fees* other than those appointed, will, on proof before the court, be disqualified from holding any office under the Act, as well as liable for damages as above (*t*).

*When action should be brought against registrar.* No action may be commenced against a high bailiff, or any person acting under his order or in aid of him, for anything done by him under warrant of the court duly sealed, until demand in writing, signed by the party intending to bring the action, or his solicitor or agent, has been made, or left at the office of the high bailiff, for the perusal and copy of the warrant, and the same has been refused or neglected for the space of six days.

If the demand be complied with, by showing the warrant and permitting a copy to be taken, and any action be brought against the high bailiff or such other person, without making the registrar of the court who signed or sealed the warrant defendant, the jury must find for the defendant on proof of the warrant, notwithstanding any defect of jurisdiction or other irregularity. If the action be brought jointly against the high bailiff or other person and the registrar, under the like circumstances, then, upon proof of the warrant, the jury must find for the high bailiff or other person, notwithstanding any such defect or irregularity as aforesaid. If the verdict be given against the registrar, the plaintiff will recover his costs, "to be taxed in such manner by the proper officer as to include such costs as such plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid" (*u*).

The primary object of these provisions is to protect the high bailiffs and their officers. The power to plead the general issue, and give the special matter in evidence, extended to the registrar, when the action was brought

(*s*) 9 & 10 Vict. c. 95, s. 116.

(*u*) 13 & 14 Vict. c. 61, s. 19;

(*t*) *Ibid.*, s. 117. See *ante*,

38 & 39 Vict. c. 66.

against him, either alone or jointly with the high bailiff or other officer (*v*); but the power to plead the general issue is now repealed (*w*). The provisions do not apply to actions for neglect of duty (*x*).

*Procedure against officers generally.* All actions and prosecutions against any person for anything done in pursuance of the Acts must be laid and tried in the county where the fact was committed, and must be commenced within three calendar months; and one month's notice in writing of the action, and of the cause thereof, must be given to the defendant; and no plaintiff will recover in any such action if tender of sufficient amends shall have been made before action, or if after action a sufficient sum shall have been paid into court, with costs (*y*). It is doubtful whether this section applies to actions in the county court at all; but, until the point has been decided, the plaintiff should give notice of action, and enter his plaint in accordance with the above section, subject, however, to the provisions already noticed (*z*).

The defendant may plead the general issue and give the special matter in evidence, and the warrant under the seal of the county court being produced will be deemed sufficient proof of the authority of the county court previous to the issuing of the warrant. In case the plaintiff shall have a verdict against him, or be nonsuited, or discontinue, the defendant will have full costs as between solicitor and client (*a*).

The principles by which the right to notice of action is governed have been already discussed (*b*), and the same principles govern the cases in which the protection of the statutes above referred to apply generally. So the protection does not extend to cases of omission or non-feasance (*c*). But where an act is done, and the person doing it *bonâ fide* believes that he is acting in pursuance of his powers, he comes within the protection of the Act (*d*); so where an

(*v*) *Dews v. Ryley*, 11 C. B. 434; 20 L. J. C. P. 264.

(*w*) 38 & 39 Vict. c. 66.

(*x*) *Partridge v. Elkington*, L.R. 6 Q. B. 82; 40 L. J. Q. B. 49; 19 W. R. 385; and see *infra*.

(*y*) 9 & 10 Vict. c. 95, s. 138.

(*z*) See *Partridge v. Elkington*, L.R. 6 Q. B. 84; per Blackburn, J., and *ante*, pp. 55, 110.

(*a*) 15 & 16 Vict. c. 54, s. 6.

(*b*) *Ante*, p. 109.

(*c*) *Davis v. Curling*, 8 Q. B. 286; *Joule v. Taylor*, 7 Ex. 58; 21 L. J. Ex. 31.

(*d*) *Dews v. Ryley* 11 C. B. 434; 20 L. J. C. P. 264; *Booth v. Clive*, 10 C. B. 827; 20 L. J. C. P. 151; *White v. Morris*, 11 C. B. 1015; 21 L. J. C. P. 185; *Burling v. Harley*, 3 H. & N. 271; 27 L. J. Ex. 258.

action was brought against a judge for disobeying a prohibition, honestly believing that his duty compelled him to do so (*e*), and where process was executed *bonâ fide*, by mistake, against the goods of the wrong person (*f*), the protection was held to apply. And the *bona fides* of an act done by a bailiff was held not to be negatived by the fact that he had received an indemnity from an execution-creditor, the jury having found that he *bonâ fide* believed that he was acting under the Acts (*g*). A plaintiff obtaining judgment for want of appearance and execution thereon (9 & 10 Vict. c. 95, s. 80, *ante*, p. 179), is also within the above protection (*h*). The statutes relied on must all be named in the margin of the plea or notice of defence; but the judge has power to amend the marginal note in case of omission (*i*).

#### PART IV. OFFENCES BY PRIVATE INDIVIDUALS IN RELATION TO PROCEEDINGS.

*Contempt of court.* Any person wilfully insulting the judge or any juror, or any bailiff, registrar, or officer of the court for the time being during his sitting or attendance in court, or in going to or returning from the court, or wilfully interrupting the proceedings of the court, or otherwise misbehaving in court, may be taken into custody, by order of the judge, by any bailiff or officer of the court, with or without the assistance of any other person, and detained until the rising of the court. And the judge may by warrant (*j*) under his hand, sealed with the seal of the court, commit any such offender to prison (*k*) for any time not exceeding seven days, or impose a fine not exceeding 5*l*. for every such offence, and in default of payment commit him to prison for any time not exceeding seven days, unless the fine be sooner paid (*l*).

This section confines the power of the judge to contempts committed in court, and it is conceived, to the cases expressly mentioned in the section. The judge has no power to

(*e*) *Booth v. Clive*, *supra*.

(*f*) *Burling v. Harley*, *supra*.

(*g*) *White v. Morris*, *supra*.

(*h*) *Gayton v. Bayman*, 1 F. & F. 675.

(*i*) *Ibid.*; *Edwards v. Hodges*, 24 L. J. C. P. 121.

(*j*) Form 193.

(*k*) As to the gaol to which debtors, and persons guilty of contempt, &c., may be committed, see 9 & 10 Vict. c. 95, ss. 49, 113; 12 & 13 Vict. c. 101, ss. 1, 2, 3, 5; 19 & 20 Vict. c. 108, s. 74.

(*l*) 9 & 10 Vict. c. 95, s. 113.

proceed under the section, or by virtue of his authority as a judge, against a person for contemptuous and insulting writing published out of court (*m*). It is not necessary to set forth in the warrant of commitment the particulars of an insult offered to the judge; so a warrant was held good which recited that the plaintiff wilfully insulted the judge during his sitting, without showing in what way (*n*).

Refusal to attend and answer interrogatories (*ante*, p. 154), and neglect to produce documents after service of a summons to produce them, or to attend when summoned as a witness (*ante*, p. 156), also constitute contempts of court; but it is conceived that the power of punishment is confined strictly to the proceedings specially authorised in regard to them. As to how a person committed may obtain his discharge, see *ante*, p. 309.

*Assaulting bailiffs.* If any officer or bailiff be assaulted while in the execution of his duty, or if any rescue be made or attempted, of any goods levied under process of the court, the person so offending will be liable to a fine not exceeding 5*l.*, to be recovered by order of the court, or before a justice of the peace (*o*). And the bailiff, or any peace officer, in any such case, may take the offender into custody (with or without a warrant), and bring him before such court or justice accordingly (*p*). This provision, as has been already explained, is a power given to the individual officer, and a wrongful exercise of it does not render the high bailiff responsible (*q*). A person assaulting a bailiff may be indicted for the assault instead of being proceeded against under these provisions (*r*).

*Perjury.* Every person who in any examination on oath or solemn affirmation before any judge of a county court, wilfully and corruptly gives false evidence will be guilty of perjury (*s*). On the trial of a plaint, the judge having decided that a debt was due from the defendant, while considering how it was to be paid, asked the defendant his

(*m*) *Reg. v. Lefroy*, L. R. 8 Q. B. 134; 28 L. T. N. S. 132; S. C., *Ex parte Jolliffe*, 42 L. J. Q. B. 121; 21 W. R. 332.

(*n*) *Levy v. Moylan*, 10 C. B. 189; 19 L. J. C. P. 308.

(*o*) See *post*, p. 356, as to recovery of penalties before justices.

(*p*) 9 & 10 Vict. c. 95, s. 114.

(*q*) *Smith v. Pritchard*, *ante*, p. 348.

(*r*) *Reg. v. Davis*, 8 Cox, C. C. 486; 30 L. J. M. C. 159; *ante*, p. 345.

(*s*) 9 & 10 Vict. c. 95, s. 84. For form of indictment, see *Reg. v. Hankins*, 2 Car. & K. 824; and see *Reg. v. Lavey*, 2 Den. C. C. 504; 21 L. J. M. C. 10.

Christian-name; he then falsely swore that his name was Edward, and not Bernard: *Held*, that he was properly indicted and convicted of perjury (*t*). Perjury may also be assigned for false evidence given before an arbitrator appointed under the provisions (*ante*, p. 170) already noticed (*u*).

*Forgery.* Any person who forges the seal or any process of the court, or who serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process of the said court, will be guilty of felony (*v*).

Where A., being a creditor of J. R., sent a letter to the latter purporting to have been signed by the clerk of a county court, demanding payment, and in default threatening proceedings in a county court, and on the wife of J. R. going to him, told her that he had ordered the county court to send the letter, on which she paid him the amount, and he then demanded, but did not receive, 1s. 3d. for the county court expenses, it was held that A. was guilty of a felony under the latter part of the section (*w*). So also when a prisoner filled up a blank form of application for a summons and signed it "W. G., registrar of the Taunton court," and endorsed a notice on the back of it stating that execution would be issued unless the amount were immediately paid, and signed it "W. G." (*x*). But where a notice to produce documents at the hearing of a cause in a county court was sent by post to the prosecutor, no plaint having been entered, it was held that the paper was only a notice to produce, and did not purport to be a process of the court (*y*).

## PART V. RECOVERY OF PENALTIES.

*Recovery of penalties.* All penalties, fines, and forfeitures inflicted or authorised to be imposed by the County Courts' Acts (the manner of recovering and applying whereof is

(*t*) *Reg. v. Mullany*, L. & C. 593; 34 L. J. M. C. 111.

(*u*) 14 & 15 Vict. c. 99, s. 16. See, before this statute, *Reg. v. Hallett*, 2 Den. C. C. 237; 20 L. J. M. C. 197.

(*v*) 9 & 10 Vict. c. 95, s. 57.

(*w*) *Reg. v. Evans*, 1 Dears. & B. C. C. 226; 26 L. J. M. C. 92.

(*x*) *Reg. v. Richmond*, 1 Bell, C. C. 142; 28 L. J. M. C. 188.

(*y*) *Reg. v. Castle*, 1 Dears. & B. C. C. 363; 27 L. J. M. C. 71.



not otherwise particularly directed) may, upon proof before a justice of the peace having jurisdiction within the county or place where the offender resides or is, or where the offence was committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice. The overplus (if any), after such penalties, fines, and forfeitures, and the charges of the distress and sale, are deducted, must be returned, upon demand, to the owner of the goods and chattels (z).

If the penalties, &c., are not paid forthwith after conviction, the justice may order the offender to be detained in custody until return can be conveniently made to the warrant of distress; unless the offender gives sufficient security to the satisfaction of the justice for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking the security. The security may be taken by the justice by way of recognisance, or otherwise, as he thinks fit (a).

If, on the return of the warrant, it appears that no sufficient distress can be had upon it, or if it appears to the satisfaction of the justice, either by confession of the offender or otherwise, that he has not within the jurisdiction of the justice sufficient goods and chattels whereon to levy penalties, &c., costs and charges, the justice may, at his discretion, without issuing any warrant of distress, commit the offender to the gaol or house of correction, for any term not exceeding three calendar months, unless the penalties, &c., and reasonable charges be sooner paid and satisfied (b).

Unless the moneys when paid and levied are not by the Acts directed to be otherwise applied, they must be paid to the registrar of the county court, and applied in aid of the general fund of the court (c).

The above provisions give justices a jurisdiction concurrent with, but not exclusive of, that of the county courts. When payment of a fine is enforced in the county court, it may be enforced, on the order of the judge, in the same manner as a judgment (d), and the amount must be paid to the registrar, and accounted for to the treasurer (e) or person duly appointed by the Treasury.

(z) 9 & 10 Vict. c. 95, s. 130.

(a) *Ibid.*, s. 131.

(b) *Ibid.*, s. 132.

(c) *Ibid.*, s. 133.

(d) 9 & 10 Vict. c. 95, s. 87.

(e) *Ibid.*, ss. 41, 133. See, as to accounting, &c., *ante*, pp. 333, 341.



*Penalties specially recoverable before justices.* When any penalty or forfeiture is specially made recoverable before a justice of the peace, such justice may summon before him the party complained against, and on proof of the offence may convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing may have been exhibited before him. And the proceedings will be as valid as if an information in writing had been exhibited (*f*).

*Generally.* The form of conviction applicable to all cases, whether before justices or before a county court judge, will be found in the section of the Act below referred to (*g*).

No order, verdict or judgment, or other proceeding made concerning any of the matters aforesaid may be quashed or vacated for want of form (*h*).

(*f*) 9 & 10 Vict. c. 95, s. 134.

pp. 292, 350, as to irregularities and informalities.

(*g*) *Ibid.*, s. 135.

(*h*) *Ibid.*, s. 136. See *ante*,

## APPENDIX A.

### THE JUDICATURE ACT, 1873.

[36 & 37 VICT. c. 66.]

25. And whereas it is expedient to take occasion of the union of the several courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: be it enacted as follows :—

Statutes of  
Limitation  
inapplicable  
to express  
trusts.

2. No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Equitable  
waste.

3. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

4. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for  
possession  
of land by  
mortgagors.

5. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

6. Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal *chose in action*, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or *chose in action*, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or *chose in action* from the date of such notice, and all legal and other remedies for the same; and the power to give a good discharge for the same, without the concurrence of the assignor: provided always, that if the debtor, trustee, or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees. *See pp. 90, 236.*
7. Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity.
8. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. *See p. 82.*
9. In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the courts of common law, shall prevail.

Assignment  
of debts and  
*choses in  
action.*

Stipulations  
not of the  
essence of  
contracts.

Injunctions  
and re-  
ceivers.

Damages by  
collisions at  
sea.

- Infants. 10. In questions relating to the custody and education of infants the rules of equity shall prevail.
- Cases of conflict not enumerated. 11. Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail. *See pp. 82, 90.*
- Assignment of certain business to particular divisions of high court, subject to rules. 34. There shall be assigned (subject as aforesaid) to the Chancery division of the said court :  
2. All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from county courts. *See p. 3.*
- Appeals from inferior courts to be determined by divisional courts. 45. All appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this Act have been brought to any court or judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court, or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said high court. The determination of such appeals respectively by such divisional courts shall be final unless special leave to appeal from the same to the court of appeal shall be given by the divisional court to which any such appeal from an inferior court shall have been heard. *See p. 209.*

*The following rules under this section are contained in the rules of the supreme court, December, 1875.*

16. [Order lviii., rule 19.] In order to constitute divisional courts for the determination of appeals from inferior courts, under section 45 of the Judicature Act, 1873, each division of the High Court of Justice shall, before the 1st of January, 1876, select one of the judges of such division to act until the 1st of January, 1877, and so on before every 1st of January subsequent to the 1st of January, 1876, to act for the twelve months next ensuing.

Any two or more of the judges so selected shall constitute a divisional court for the purpose of the said section.

Any other judge of the High Court of Justice may, by arrangement between himself and any one of the judges so selected, act for such last-mentioned judge in any particular case or cases, or on any particular day or days.

The judges so selected shall make such arrangements as they shall think fit, as to the manner in which application may be made to them, or any of them, in court or chambers under the 6th section of 38 & 39 Vict. c. 50, relative to appeals by motion under that Act.

67. The provisions contained in the 5th, 7th, 8th, and 10th sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a county court. *See pp. 59, 252, 256, 258, 261, 298.*

30 & 31 Vict.  
c. 142, ss. 5,  
7, 8, and 10  
to extend to  
actions in  
high court.

76. All Acts of Parliament relating to the several courts and judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said court of appeal respectively, or wherein any of such courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said court of appeal, and the judges thereof respectively, as the case may be, had been named therein instead of such courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered. *See p. 3.*

Acts of  
Parliament  
relating to  
former  
courts to be  
read as  
applying to  
courts  
under this  
Act.

89. Every inferior court which now has, or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction, for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice. *See pp. 2, 5, 142, 148, 182, 293.*

Powers of  
inferior  
courts  
having  
equity and  
admiralty  
jurisdiction.

90. Where in any proceeding before any such inferior court any defence or counter claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter claim: provided always, that in such case it shall be lawful for the high court, or any division or judge thereof, if

Counter  
claims in  
inferior  
courts, and  
transfers  
therefrom.

it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the high court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior court to the said high court; and the same shall thenceforth be continued and prosecuted in the said high court as if it had been originally commenced therein. *See pp. 2, 137, 142, 148, 182, 293, 297.*

Rules of law  
to apply to  
inferior  
courts.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognisable by such courts. *See section 25, ante; and 38 & 39 Vict. c. 77, s. 10. See pp. 2, 90.*

## THE JUDICATURE ACT, 1875.

[38 & 39 VICT. c. 77.]

Amendment  
of 36 & 37  
Vict. c. 66,  
s. 25, as to  
rules of law  
upon certain  
points.

10. Whereas by section 25 of the principal Act, after reciting that it is expedient to amend and declare the law to be there- after administered in England as to the matters next therein- after mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

Sub-section 1 of clause 25 of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect (that is to say): in the administration by the court of the assets of any person who may die after the commence- ment of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding- up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of an- nuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

In sub-section 7 of the said section, the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act.

## APPENDIX B.

### COMMON LAW PROCEDURE ACT, 1854.

[17 & 18 VICT. c. 125.]

*Sections extended to county courts by Order in Council,  
November 18, 1867.*

50. Upon the application of either party to any cause or other civil proceeding in any of the superior courts, upon an affidavit by such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the court or judge to order that the party against whom such application is made, or if such party is a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds) to the production of such as are in his or their possession or power; and upon such affidavit being made the court or judge may make such further order thereon as shall be just. *See p. 151.*

Discovery of documents.

51. In all cases in any of the superior courts, by order of the court or a judge, the plaintiff may, with the declaration, and the defendant may with the plea, or either of them by leave of the court or a judge may, at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or in the case of a body corporate any of the officers of such body corporate, within ten days to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way; and any party or officer omitting, without just cause, sufficiently to answer all questions as to which a discovery may be sought within the above time, or such extended time as the court or a judge shall allow, shall be deemed to have committed a contempt of the court, and shall be liable to be proceeded against accordingly. *See p. 154.*

Power to deliver written interrogatories to opposite party.



Affidavits  
by party  
proposing to  
interrogate,  
and his  
attorney.

52. The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or, in the case of a body corporate, of their attorney or agent, stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and, if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay; provided that where it shall happen from unavoidable circumstances that the plaintiff or defendant cannot join in such affidavit, the court or judge may, if they or he think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit. *See p. 154.*

Oral exami-  
nation of  
parties,  
when to be  
allowed.

53. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the court or a judge, at their or his discretion, to direct an oral examination of the interrogated party, as to such points as they or he may direct, before a judge or master; and the court or judge may by such rule or order, or any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon, and otherwise, as to such court or judge shall seem just. *See p. 155.*

Proceedings  
upon such  
rule or  
order.

54. Such rule or order shall have the same force and effect, and may be proceeded upon in like manner, as an order made under the said hereinbefore-mentioned Act passed in the first year of the reign of his late majesty King William the Fourth. *See p. 155.*

Examina-  
tion of  
judgment-  
debtor as to  
debts due to  
him.

60. It shall be lawful for any creditor who has obtained a judgment in any of the superior courts to apply to the court or a judge for a rule or order that the judgment-debtor should be orally examined as to any and what debts are owing to him before a master of the court, or such other person as the court or judge shall appoint; and the court or judge may make such rule or order for the examination of such judgment-debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party before a master under this Act. *See p. 238.*

Judge may  
order an at-  
tachment of  
debts.

61. It shall be lawful for a judge, upon the *ex parte* application of such judgment-creditor, either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment-debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person

(hereinafter called the garnishee) to the judgment-debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge or a master of the court, as such judge shall appoint, to show cause why he should not pay the judgment-creditor the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment debt. *See p. 238.*

62. Service of an order that debts due or accruing to the judgment-debtor shall be attached, or notice thereof to the garnishee, in such manner as the judge shall direct, shall bind such debts in his hands. *See p. 238.*

Order for attachment to bind debts.

63. If the garnishee does not forthwith pay into court the amount due from him to the judgment-debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment-debtor, or if he does not appear upon summons, then the judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt. *See p. 239.*

Proceedings to levy amount due from garnishee to judgment-debtor.

64. If the garnishee dispute his liability, the judge, instead of making an order that execution shall issue, may order that the judgment-creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment-debtor, if less than the judgment debt, and for costs of suit; and the proceedings upon such suit shall be the same, as nearly as may be, as upon a writ of revivor issued under the Common Law Procedure Act, 1852. *See p. 239.*

Judge may allow judgment-creditor to sue garnishee.

65. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed. *See p. 239.*

Garnishee discharged.

66. In each of the superior courts there shall be kept at the master's office a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and the mode of keeping such books shall be the same in all the courts; and copies of any entries made therein may be taken by any person, upon application to any master.

Attachment book to be kept by the masters of each court.

Unnecessary in county courts.

67. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge. *See p. 239.*

Costs of application.

83. It shall be lawful for the defendant or plaintiff in replevin in any cause in any of the superior courts in which, if judgment were obtained, he would be entitled to relief against such

Equitable defence may be pleaded.

judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words, "for defence on equitable grounds," or words to the like effect. *See p. 142.*

Equitable  
defence  
after  
judgment.

84. Any such matter which, if it arose before or during the time for pleading, would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *audita querela*.

Equitable  
replication.

85. The plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds; provided that such replication shall begin with the words "for replication on equitable grounds," or words to the like effect.

Court or  
judge may  
strike out  
equitable  
plea or  
replication.

86. Provided always, that in case it shall appear to the court, or any judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a court of law so as to do justice between the parties, it shall be lawful for such court or judge to order the same to be struck out on such terms as to costs and otherwise as to such court or judge may seem reasonable. *See p. 142.*

## COMMON LAW PROCEDURE ACT, 1860.

[23 & 24 VICT. c. 126.]

*Sections extended to county courts by Order in Council,  
May 18, 1870.*

Judge may  
refuse to  
interfere in  
proceedings  
to attach  
debts.

28. In proceedings to obtain an attachment of debts under the Common Law Procedure Act, 1854, the judge may, in his discretion, refuse to interfere, where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious. *See p. 239.*

Proceed-  
ings where  
third person  
has a lien on  
the debt.

29. Whenever in proceedings to obtain an attachment of debts, under the Act above mentioned, it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the judge may order such third person to appear before him, and state the nature and particulars of his claim upon such debt. *See p. 239.*

Judge may  
bar claim of  
third person  
and make  
orders.

30. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the judge may think fit to call before him, or in case of such third person not appearing before him upon such summons, the judge may order execution to issue to levy the amount due from such garnishee, or the judgment-creditor to

proceed against the garnishee according to the provisions of the Common Law Procedure Act, 1854, and he may bar the claim of such third person or make such other order as he shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs as he shall think just and reasonable. *See p. 239.*

31. The provisions of the Common Law Procedure Act, 1854, so far as they are applicable, shall apply to any order, and the proceedings thereon made and taken in pursuance of the therein next before-mentioned powers under this Act. *See p. 239.*

Provisions of 17 & 18 Vict. c. 125, to apply to orders.

## APPENDIX C.

### COUNTY COURTS' ACTS.

#### TABLE OF REPEALED AND AMENDED SECTIONS.

|                           |                                                                                                                                                                    |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9 & 10 Vict. c. 95, s. 4. | Repealed in part, 38 & 39 Vict. c. 66.                                                                                                                             |
| " "                       | 5, 6, 7. Rep. 38 & 39 Vict. c. 66.                                                                                                                                 |
| " "                       | 8. Rep. in part, 12 & 13 Vict. c. 101, s. 11.                                                                                                                      |
| " "                       | 9, 10, 11, 12. Rep. 38 & 39 Vict. c. 66.                                                                                                                           |
| " "                       | 15, 17. Rep. 38 & 39 Vict. c. 66.                                                                                                                                  |
| " "                       | 19. Rep. 21 & 22 Vict. c. 74, s. 1. Substituted provisions, 21 & 22 Vict. c. 74, ss. 1, 2.                                                                         |
| " "                       | 20. Rep. in part, 19 & 20 Vict. c. 108, s. 6; 38 & 39 Vict. c. 66, and amended 13 & 14 Vict. c. 61, s. 3; 19 & 20 Vict. c. 108, s. 6; 30 & 31 Vict. c. 142, s. 20. |
| " "                       | 23. Am. 29 Vict. c. 14, s. 1. Rep. 38 & 39 Vict. c. 66.                                                                                                            |
| " "                       | 24. Rep. in part, 38 & 39 Vict. c. 66, and am. 13 & 14 Vict. c. 61, ss. 3, 4; 19 & 20 Vict. c. 108, ss. 8, 9.                                                      |
| " "                       | 28. Rep. in part, 29 Vict. c. 14, s. 11; 38 & 39 Vict. c. 66.                                                                                                      |
| " "                       | 30. Rep. in part, 38 & 39 Vict. c. 66.                                                                                                                             |
| " "                       | 31. Rep. in part, 13 & 14 Vict. c. 61, s. 4.                                                                                                                       |
| " "                       | 32. Rep. 22 Vict. c. 8, s. 1.                                                                                                                                      |
| " "                       | 33. Rep. in part, 19 & 20 Vict. c. 108, s. 83; 38 & 39 Vict. c. 66.                                                                                                |
| " "                       | 34, 35. Rep. 38 & 39 Vict. c. 66.                                                                                                                                  |
| " "                       | 37. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 78.                                                                          |
| " "                       | 38. Rep. 38 & 39 Vict. c. 66.                                                                                                                                      |
| " "                       | 39. Rep. in part, 38 & 39 Vict. c. 66.                                                                                                                             |
| " "                       | 40. Rep. in part, 38 & 39 Vict. c. 66. Am. 19 & 20 Vict. c. 108, ss. 80 and 81; 29 Vict. c. 14, s. 14.                                                             |
| " "                       | 41. Rep. in part, 12 & 13 Vict. c. 101, s. 7, and virtually rep. 15 & 16 Vict. c. 54, s. 9.                                                                        |
| " "                       | 42. Rep. in part, 38 & 39 Vict. c. 66.                                                                                                                             |
| " "                       | 43, 45, 47. Rep. 38 & 39 Vict. c. 66.                                                                                                                              |
| " "                       | 48. Rep. 30 & 31 Vict. c. 142, s. 18; 33 & 34 Vict. c. 15, s. 5.                                                                                                   |
| " "                       | 49. Am. 12 & 13 Vict. c. 101, s. 5.                                                                                                                                |

- 9 & 10 Vict. c. 95, ss. 50 to 55. Rep. 19 & 20 Vict. c. 108, ss. 2, 85; 30 & 31 Vict. c. 142, s. 18; 33 & 34 Vict. c. 15, s. 5.
- „ „ 56. Amended 28 & 29 Vict. c. 99, s. 14; 30 & 31 Vict. c. 142, s. 19.
- „ „ 58. Am. 13 & 14 Vict. c. 61, s. 1; 19 & 20 Vict. c. 108, ss. 4, 24, 25, 27; 30 & 31 Vict. c. 142, ss. 11, 12.
- „ „ 60. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 1.
- „ „ 62. Am. and rep. in part, 38 & 39 Vict. c. 50, ss. 3, 12; 38 & 39 Vict. c. 66.
- „ „ 72. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 78. Rep. in part, 19 & 20 Vict. c. 108, s. 32; 38 & 39 Vict. c. 66.
- „ „ 79. Am. 13 & 14 Vict. c. 61, s. 10.
- „ „ 85. Rep. 38 & 39 Vict. c. 50, s. 12. Substituted provisions, 38 & 39 Vict. c. 50, s. 2.
- „ „ 91. Rep. in part, 15 & 16 Vict. c. 54, s. 10.
- „ „ 92. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 45.
- „ „ 98 to 101. Rep. 32 & 33 Vict. c. 83, s. 20. Substituted provisions, 32 & 33 Vict. c. 62, s. 5.
- „ „ 102. Rep. in part, 19 & 20 Vict. c. 108, s. 2.
- „ „ 103. Rep. 38 & 39 Vict. c. 50, s. 12.
- „ „ 106. Am. 12 & 13 Vict. c. 101, s. 10.
- „ „ 107. Rep. 13 & 14 Vict. c. 61, s. 20; 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 75.
- „ „ 110. Probably rep. See p. 247.
- „ „ 113. Am. 12 & 13 Vict. c. 101, ss. 2, 3, 5.
- „ „ 118. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 19 & 20 Vict. c. 108, s. 72; 30 & 31 Vict. c. 142, s. 31.
- „ „ 121. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 63—68.
- „ „ 122, 123. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 50—56.
- „ „ 126, 127. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 50—56.
- „ „ 128, 129. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, ss. 1, 5.
- „ „ 138. Am. 15 & 16 Vict. c. 54, s. 6.
- „ „ 139. Rep. 19 & 20 Vict. c. 108, s. 2.
- „ „ 142. Rep. in part, 19 & 20 Vict. c. 108, s. 2.
- „ „ 143. Rep. 38 & 39 Vict. c. 66.
- 12 & 13 Vict. c. 101, s. 1, 2. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 4. Rep. 38 & 39 Vict. c. 66.
- „ „ 6. Rep. in part, 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 78.
- „ „ 7, 8, 9, 11. Rep. 38 & 39 Vict. c. 66.
- „ „ 12. Rep. 38 & 39 Vict. c. 66. Present provisions, 19 & 20 Vict. c. 108, ss. 2, 32.
- „ „ 13, 14, 15. Rep. 38 & 39 Vict. c. 66.
- „ „ 16, 17. Rep. in part, 38 & 39 Vict. c. 66.

- 12 & 13 Vict. c. 101, s. 19. Rep. 38 & 39 Vict. c. 66.
- 13 & 14 Vict. c. 61, s. 4. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 5. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 78.
- „ „ 6. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 33—35.
- „ „ 7. Rep. 19 & 20 Vict. c. 108, s. 2.
- „ „ 11, 12. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 5.
- „ „ 13. Rep. 15 & 16 Vict. c. 54, s. 4. Substituted provisions, 30 & 31 Vict. c. 142, s. 5.
- „ „ 14. Rep. in part, 15 & 16 Vict. c. 54, s. 2. Extended by 19 & 20 Vict. c. 108, s. 68; 30 & 31 Vict. c. 142, s. 13.
- „ „ 17. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 23, 25.
- „ „ 19. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 20, 21. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 75.
- „ „ 22. Rep. in part, 38 & 39 Vict. c. 66, s. 2.
- „ „ 23. Rep. 19 & 20 Vict. c. 108. Substituted provisions, 19 & 20 Vict. c. 108, s. 58.
- 15 & 16 Vict. c. 54, s. 1. Rep. 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 33.
- „ „ 2. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 4. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 5.
- „ „ 8. Virtually obsolete, and see 29 Vict. c. 14.
- „ „ 10. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 11, 12, 13. Rep. 38 & 39 Vict. c. 66.
- „ „ 14. Amended by 19 & 20 Vict. c. 108, s. 81. Rep. 38 & 39 Vict. c. 66.
- „ „ 16. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 17, 19. Rep. 38 & 39 Vict. c. 66.
- 17 & 18 Vict. c. 16, s. 1. Rep. 19 & 20 Vict. c. 108, s. 21; 38 & 39 Vict. c. 66. Substituted provisions, 19 & 20 Vict. c. 108, ss. 68, 69.
- „ 125, s. 3. Rep. as to county courts, 21 & 22 Vict. c. 74, s. 5.
- 19 & 20 Vict. c. 108, s. 1, 2. Rep. 38 & 39 Vict. c. 66.
- „ „ 11. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 15. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 1.
- „ „ 23. Rep. in part, 38 & 39 Vict. c. 66.
- „ „ 28, 29. Rep. 38 & 39 Vict. c. 50, s. 12. Substituted provisions, 38 & 39 Vict. c. 50, s. 1.
- „ „ 30. Rep. 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 5.
- „ „ 37. Rep. 38 & 39 Vict. c. 66.
- „ „ 43. Rep. in part, 21 & 22 Vict. c. 74, s. 4.
- „ „ 59, 61. Rep. 38 & 39 Vict. c. 66.
- „ „ 77. Rep. 38 & 39 Vict. c. 66.
- „ „ 82. Rep. as to future registrars, 29 Vict. c. 14, s. 14.
- „ „ Schedule A. Rep. 38 & 39 Vict. c. 66.
- „ „ Schedules B, C. Rep. in part, 38 & 39 Vict. c. 66.



- 21 & 22 Vict. c. 74, s. 1. Rep. in part, 38 & 39 Vict. c. 66.  
 5. Rep. 38 & 39 Vict. c. 66.  
 22 & 23 Vict. c. 57. Rep. 32 & 33 Vict. c. 83, s. 20.  
 24 & 25 Vict. c. 134, s. 105. Rep. 32 & 33 Vict. c. 83, s. 20.  
 28 & 29 Vict. c. 99, s. 1, sub-s. 4. Rep. 30 & 31 Vict. c. 142, s. 33.  
 Substituted provisions, 30 & 31 Vict. c. 142,  
 s. 9.  
 " " 13. Rep. in part, 38 & 39 Vict. c. 66.  
 " " 23. Rep. 38 & 39 Vict. c. 66.  
 29 Vict. c. 14, s. 6, 7. These sections were *intended* to be repealed by  
 38 & 39 Vict. c. 50, s. 12.  
 " " 8. Rep. in part, 33 & 34 Vict. c. 15, s. 5.  
 " " 9. Rep. 33 & 34 Vict. c. 15, s. 5.  
 30 & 31 Vict. c. 142, s. 2. Rep. 38 & 39 Vict. c. 50, s. 12. Substituted  
 provisions, 38 & 39 Vict. c. 50, s. 1.  
 " " 6. Rep. 38 & 39 Vict. c. 66.  
 " " 18. Rep. 33 & 34 Vict. c. 15, s. 5.  
 " " 32. Rep. 38 & 39 Vict. c. 50, s. 12.  
 " " 33, 36. Rep. 38 & 39 Vict. c. 66.  
 " " Schedule C. Rep. 38 & 39 Vict. c. 66.  
 31 & 32 Vict. c. 71, s. 29. Rep. 38 & 39 Vict. c. 50, s. 12.

## THE COUNTY COURTS ACT, 1846.

[9 & 10 VICT. c. 95; *August 28, 1846.*]

WHEREAS sundry Acts of Parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes, and places in England. . . . Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for Her Majesty, with the advice of her Privy Council, from time to time to order that this Act shall be put in force in such county or counties as to Her Majesty, with the advice aforesaid, from time to time shall seem fit; and this Act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: provided always, that no court shall be established under this Act in the city of London. *See p. 323.*

Her Majesty may order this Act to be put in execution.

Counties to be divided into districts.

2. And be it enacted, that it shall be lawful for Her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereunto adjoining, into districts, and to order that the county court shall be holden for the recovery of debts and demands under this Act in each of such districts, and from time to time to alter such districts as to Her Majesty, with the advice aforesaid, shall seem fit, and to order from time to time that the number of districts in and for which the court shall be holden shall be increased until the whole of such county shall be within the provisions of this Act, and with the advice aforesaid to alter the place of holding any such court, or to order that the holding of any such court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name and in what towns and places the county court shall be holden in each district; and if it shall appear to Her Majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within the jurisdiction of the county court of an adjoining county, it shall be lawful for Her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes of this Act for such adjoining county in and for such district as Her Majesty shall order, in like manner as if it were part of such adjoining county. *See p. 323.*

3. And be it enacted, that every court to be holden under this Act shall have all the jurisdiction and powers of the county court for the recovery of debts and demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a judge for each district to be created under this Act, and the county court may be holden simultaneously in all or any of such districts; and every court holden under this Act shall be a court of record. *See pp. 323, 326, 329.*

Courts held under this Act to have the same jurisdiction as county courts, and to be courts of record.

4. And be it enacted, that for all purposes except those which shall be within the jurisdiction of the courts holden under this Act, the county court shall be holden as if this Act had not been passed. *See p. 323. Repealed in part by 38 & 39 Vict. c. 66.*

Preserving the jurisdiction of county courts.

5, 6, 7. *Repealed by 38 & 39 Vict. c. 66.*

8. And be it enacted, that any Order in Council made for the purposes of this Act shall be published in the "London Gazette." *Repealed, except as above, by 12 & 13 Vict. c. 101, s. 11. See p. 322.*

Orders in Council to be published in the "London Gazette."

9, 10, 11, 12. *Repealed by 38 & 39 Vict. c. 66.*

13. And be it enacted that whenever any order shall be made for holding a court under this Act within the several towns mentioned in the first column of the schedule marked C, annexed to this Act, then, upon the next vacancy which shall happen after the passing of this Act in the several offices mentioned in the second column of the said schedule C in conjunction with such courts, the several lords for the time being of the manors and liberties mentioned in the third column of the said schedule C, in conjunction with the said courts, shall be entitled to appoint persons properly qualified according to the provisions of this Act, to fill the said offices respectively, subject, nevertheless, in each case to the approval of one of Her Majesty's principal secretaries of state. *See pp. 326, 330.*

Provisions for certain lords of manors having rights of appointment under the Acts hereby repealed.

14. *Lords of manors, &c., may surrender courts with consent of persons interested.*

15. *Repealed by 38 & 39 Vict. c. 66.*

16. And be it enacted that, from time to time, when any judge appointed under this Act shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another judge shall be appointed who shall be a barrister-at-law, who shall be of seven years' standing, or who shall have practised as a barrister and special pleader for at least seven years, or who shall have been the county clerk of the same county at the time of the passing of this Act; and every such appointment shall be made by the lord chancellor, or, where the whole of the district is within the Duchy of Lancaster, by the chancellor of the Duchy of Lancaster. *See p. 326.*

For supplying vacancies among the judges of the county courts.

17. *Repealed by 38 & 39 Vict. c. 66.*

18. And be it enacted, that it shall be lawful for the said lord chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the chancellor of the said duchy, if he shall think fit, to remove for inability or misbehaviour any such judge already appointed or hereafter to be appointed. *See p. 326.*

Judges of the county courts removable for inability, &c.

19. *Repealed by 21 & 22 Vict. c. 74, s. 1. Substituted provisions, 21 & 22 Vict. c. 74, ss. 1, 2.*

As to the appointment of a deputy to a judge.

Repealed by 19 & 20 Vict. c. 108, s. 6, 33 & 39 Vict. c. 66.

Repealed by 33 & 39 Vict. c. 66.

20. And be it enacted, that in case of illness or unavoidable absence, the cause whereof shall be entered in the minutes of the court, it shall be lawful for the judge appointed to hold any court under this Act, or in case of the inability of the judge to make such appointment, for the lord chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the chancellor of the duchy to appoint some other person, *who shall be a judge appointed under this Act, or who shall have practised as a barrister-at-law for at least three years, or as an attorney of one of Her Majesty's superior courts of common law for ten years, but not then residing or practising as an attorney in the district for which the court is holden*, to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said lord chancellor or chancellor of the duchy, to appoint a deputy, *who shall be a judge appointed under this Act, or who shall have practised as a barrister-at-law for at least three years*, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges, and perform all the duties, of the judge for whom he shall have been so appointed. *See p. 327. Amended by 13 & 14 Vict. c. 61, s. 3; 19 & 20 Vict. c. 108, s. 6; 30 & 31 Vict. c. 142, s. 20; 38 & 39 Vict. c. 66.*

Judges may act as justices if in the commission of the peace.

21. And be it enacted that every judge of the county court whose name shall be inserted by Her Majesty in any commission of the peace for the county, riding, or division of a county, for which he is appointed judge of the county court, may and shall act in the execution of the office of justice of the peace for the said county, riding, or division, although he may not have such qualification by estate or interest in lands, tenements, and hereditaments as is required by law in the case of other persons being justices of the peace for a county, provided that he be not disqualified by law to act as a justice of the peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid. *See p. 326.*

Judges, &c., appointed under this Act authorised to perform certain duties relating to matters depending in the Court of Chancery.

22. And be it enacted, that the judges and other officers to be appointed under this Act shall be authorised and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any judge thereof, or before the lord chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the lord chancellor shall from time to time by any General Order direct, and for this purpose, and subject to the General Rules and Orders of the said court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted

for and applied by them as the other fees authorised by this Act to be received are directed to be accounted for and applied: provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

23. *Treasury to appoint treasurers. Amended by 29 Vict. c. 14, s. 1. Repealed by 38 & 39 Vict. c. 66.*

24. And be it enacted, that for every court under the authority of this Act there shall be a clerk, who shall be an attorney of one of Her Majesty's superior courts of common law, and whom the judge shall be empowered to appoint, subject to the approval of the lord chancellor [and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by Her Majesty, with the advice of her Privy Council, every such clerk shall be paid by fees as hereinafter provided]; and in cases requiring the same such assistant clerks as may be necessary shall be provided and paid by the clerk of the court. *See p. 330; 13 & 14 Vict. c. 61, ss. 3, 4; 19 & 20 Vict. c. 108, ss. 8, 9. Words in brackets repealed by 38 & 39 Vict. c. 66.*

Appointment of clerks vested in judges, subject to approval of lord chancellor.

25. And be it enacted, that it shall be lawful for the lord chancellor in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of clerk, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single clerk; and where under the provisions of any Act cited in either of the said schedules A and B more than one clerk is now acting in and for the court holden under such Act, the same number of clerks shall be continued, unless it shall seem expedient to the lord chancellor to order that such number be reduced. *See p. 330; 30 & 31 Vict. c. 142, s. 23.*

In populous districts lord chancellor may direct two clerks to be appointed.

26. And be it enacted, that it shall be lawful for the clerk of any such court, with the approval of the judge, or, in case of inability of the clerk to make such appointment, for the judge, to appoint from time to time a deputy, qualified to be appointed clerk of the said court, to act for the clerk of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy, while acting under such appointment, shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the clerk of the said court for the time being. *See p. 331; 19 & 20 Vict. c. 108, ss. 12, 13; 30 & 31 Vict. c. 142, s. 20.*

In case of illness, &c. of clerk a deputy may be appointed.

27. And be it enacted, that the clerk of each court, with such assistant clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court, and shall take charge of and keep an account of all court fees

Duties of clerks.

and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer. *See p. 332.*

Offices of clerk, treasurer, and bailiff not to be conjoined.

28. And be it enacted, that it shall not be lawful for the clerk of any court holden under this Act, or the partner of any such clerk, or any person in the service or employment of such clerk or his partner, to act as treasurer or *high bailiff* of the court; or for the treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, to act as clerk or high bailiff; or for the high bailiff, his partner or clerk, or any person in the service or employment of such high bailiff or his partner, to act as *clerk* or treasurer of the court. *See pp. 330, 341. Repealed, so far as relates to conjoining offices of registrar and high bailiff, by 29 Vict. c. 11, s. 11. Words in italics repealed by 38 & 39 Vict. c. 66.*

Officers not to act as attorneys in the court.

29. And be it enacted, that no clerk, treasurer, high bailiff, or other officer of the court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court. *See p. 341.*

Penalty of 50*l.* on non-observance of the two previous enactments.

30. And be it enacted, that every person who, being the clerk of any such court, or the partner of such clerk, or a person in the service or employment of any such clerk or of his partner, shall accept the office of treasurer or *high bailiff* of such court, or who, being the treasurer of any such court, or the partner of any such treasurer, or a person in the service or employment of any such treasurer or of his partner, shall accept the office of clerk or high bailiff in the execution of this Act, or who, being the high bailiff of such court, or the partner of any such high bailiff, or a person in the service or employment of any such high bailiff or of his partner, shall accept the office of *clerk* or treasurer in the execution of this Act, and also every clerk, treasurer, high bailiff, or other officer of any such court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of 50*l.* to any person who shall sue for the same in any of Her Majesty's superior courts of record, by action of debt or on the case. *See p. 341. Words in italics repealed by 38 & 39 Vict. c. 66.*

Appointment of bailiffs.

31. And be it enacted, that for every such court there shall be one or more high bailiffs, whom the judge shall be empowered by order of court to appoint, and, in case of inability or misbehaviour, to remove by a like order; and every such high bailiff shall be empowered, subject to the restrictions hereinafter contained, by any writing under his hand to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the judge, to be bailiffs, to assist the said high bailiff, and at his pleasure to dismiss all or any of them, and appoint others in their stead; and every bailiff so appointed may also be suspended or dismissed by the judge. *See p. 336. Repealed and amended as*



to removal by 13 & 14 Vict. c. 61, s. 4; as to bailiffs after removal of high bailiff, 19 & 20 Vict. c. 108, ss. 14, 16. High bailiff not to act for more than one court, 29 Vict. c. 14, s. 13. Service by bailiffs, 30 & 31 Vict. c. 142, s. 22.

32. Repealed by 22 Vict. c. 8, s. 1.

33. And be it enacted, that the said high bailiffs or one of them shall attend every sitting of the court, for such time as shall be required by the judge, unless when their absence shall be allowed for reasonable cause by the judge, and shall, by themselves or by the bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the court; and the said high bailiffs and bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court as hereinafter provided, and, subject thereunto, to the order and direction of the judge, *and the said high bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him, in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers. See pp. 337-9, 348. As to actions against bailiff, see 13 & 14 Vict. c. 61, s. 19. The words in italics are impliedly repealed by 19 & 20 Vict. c. 108, s. 83, and expressly by 38 & 39 Vict. c. 66.*

Duties of the high bailiffs, &c.

34, 35. Repealed by 38 & 39 Vict. c. 66.

36. And be it enacted, that the treasurer, clerk, and high bailiff of every court holden under this Act who may receive any monies in the execution of his duty shall give security, for such sum and in such manner and form as the commissioners of Her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this Act (or which they may become liable to pay for any misbehaviour in their office). See pp. 330, 340.

Treasurers, clerks, and high bailiffs to give security.

37. Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 78.

38. Repealed by 38 & 39 Vict. c. 66.

39. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that the judges, clerks, bailiffs, and officers of the courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if Her Majesty shall be pleased, with the advice aforesaid [to make such order or] to order that any such court shall be abolished, or that the district for which any such court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said courts or any

Officers of courts may be paid by salaries instead of fees.



If court abolished, no compensation allowed, except in certain cases.

of them shall be abolished, or otherwise constituted than is provided by this Act, no such clerk or bailiff, nor any judge, county clerk, treasurer, or other officer of any such court, shall be entitled to *any* compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as judge, assessor, county clerk, treasurer, clerk, bailiff, or other officer, before the passing of this Act, in any of the courts mentioned in the schedule A to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; [*and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the Consolidated Fund of Great Britain and Ireland.*] See 19 & 20 Vict. c. 108, ss. 82, 83, 84. The words in brackets repealed by 38 & 39 Vict. c. 56. The other words in italics impliedly repealed. See p. 327.

Salaries, &c., of judges.

40. Provided always, that it shall be lawful for the commissioners of Her Majesty's Treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district. *Repealed, except as above, by 38 & 39 Vict. c. 66. Present provisions, 19 & 20 Vict. c. 108, ss. 80, 81, 82; 29 Vict. c. 14, s. 14. See p. 329.*

Fees and fines to be accounted for to treasurer.

41. And be it enacted, that the clerk of every court holden under this Act, *from time to time, as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this Act, and a like account of all fines levied by the court, and of the expenses of levying the same, [and shall pay over to the treasurer, quarterly or oftener in every year, by order of the court, the monies remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the court to retain for the current expenditure of the court.] Words in brackets repealed by 12 & 13 Vict. c. 101, s. 7. The other words in italics, and probably the whole section, are virtually repealed by 15 & 16 Vict. c. 54, s. 9. See p. 333.*

Clerk's accounts to be audited and settled by treasurers.

42. And be it enacted, that the treasurer of every court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court, and shall receive the balance of the various monies which such clerk and other officers shall have received under this Act,

and shall pay over to the judge of the court the amount of his fees and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank or otherwise as shall be directed by the commissioners of Her Majesty's Treasury. *See p. 341. The words in italics are repealed by 38 & 39 Vict. c. 66.*

43. *Repealed by 38 & 39 Vict. c. 66.*

44. And be it enacted, that the commissioners of Her Majesty's Treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every court holden under this Act, and for the due accounting for and application of all such balances and other sums of money. *See p. 341.*

Commissioners of Treasury to direct how balances shall be applied.

45. *Repealed by 38 & 39 Vict. c. 66.*

46. And be it enacted, that the clerk of every such court shall once in every year, and oftener if required, on such day as shall be appointed by the Commissioners of Her Majesty's Treasury, make out and send to the said Commissioners of Audit an account of all sums paid over by him to the treasurer of the court, including all unclaimed balances carried to the account of the general fund, as hereinafter provided; and every such account, duly vouched by receipts given under the hand of the treasurer, shall be a voucher to charge the treasurer in his account before the said Commissioners of Audit. *See p. 333.*

Clerk to send to commissioners of audit an account of all sums paid by him to treasurer.

47. *Repealed by 38 & 39 Vict. c. 66.*

48. *See section 50.*

49. And be it enacted, that it shall be lawful for any court holden under this Act, with the approval of one of Her Majesty's principal secretaries of state, to use as a prison for the purposes of this Act any prison now belonging to any court holden under any of the Acts cited in the said schedules A and B, in all cases where it shall appear to the said secretary of state that the common gaol or house of correction of the county, district, or place in which the court is established is inconveniently situated, or is not applicable for the use of the said courts; and wherever any such prison shall be so allowed to be used it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled an Act to amend the laws concerning prisons, or where such prison shall be situated within a borough having a separate court of sessions of the peace, it shall be deemed a house of correction for such borough. *See p. 214; also sect. 113, post; and 12 & 13 Vict. c. 101, s. 5, amending the above section.*

Where common gaols are inconvenient, prisons belonging to courts under Acts cited in schedules A and B may be used.

5 & 6 Vict. c. 98.

*Sections 48, 50, 51, 52, 53, 54, and 55 are repealed by 12 & 13 Vict. c. 101, s. 8, 19 & 20 Vict. c. 108, s. 2, 30 & 31 Vict. c. 142,*

s. 18, and 33 & 34 Vict. c. 15, s. 5. *The substituted provisions now in force are 19 & 20 Vict. c. 108, s. 85, 29 Vict. c. 14, s. 8, 33 & 34 Vict. c. 15, ss. 2, 3, 4.*

Judge to hold the court where Her Majesty shall direct.

56. And be it enacted, that the judge of each district shall attend and hold the county court at each place where Her Majesty shall have ordered that the county court shall be holden within his district at such times as he shall appoint for that purpose, so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of Her Majesty's principal secretaries of state shall in each case order; and notice of the days on which the court will be holden shall be put up in some conspicuous place in the court-house and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the clerk's office. *See p. 328. Amended by 28 & 29 Vict. c. 99, s. 14, and 30 & 31 Vict. c. 142, s. 19.*

Notices for holding courts to be put up in a conspicuous place.

Process of the court to be under seal.

57. And be it enacted, that for every court holden under this Act there shall be made a seal of the court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court; and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said court, shall be guilty of felony. *See p. 318.*

Jurisdiction of the court altered to 50l., 13 & 14 Vict. c. 61, s. 1.

58. And be it enacted, that all pleas of personal actions where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the county court, without writ; and all such actions brought in the said court shall be heard and determined in a summary way in a court constituted under this Act, and according to the provisions of this Act: provided always, that the court shall not have cognisance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for seduction, or breach of promise of marriage. *See pp. 8, 13, 16, 22, 280; also 19 & 20 Vict. c. 108, ss. 4, 24, 25, 27, and 30 & 31 Vict. c. 142, ss. 11, 12. 38 & 39 Vict. c. 66, repeals words "criminal conversation."*

Suits to be by plaint.

59. And be it enacted, that, on the application of any person desirous to bring a suit under this Act, the clerk of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be

numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaintiff on the margin thereof, shall be issued under the seal of the court according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaintiff or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known. *See pp. 113, 114, 119; where service may be made, 19 & 20 Vict. c. 108, s. 17; issue and service in metropolitan courts, 19 & 20 Vict. c. 108, s. 18.*

60. *Summons may issue, though cause of action may not arise in the district. Repealed by 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 1. See p. 53.*

61. And be it enacted, that any summons or other process which under this Act shall be required to be served out of the district of the court from which the same shall have issued may be served by the bailiff of any court holden under this Act in any part of England, and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts. *See pp. 119, 219, 338.*

Processes out of district of court may be served by bailiff of any other court.

62. And be it enacted, that service of any summons or other process of the court which shall require to be served out of the district of the court may be proved by affidavit, purporting to be sworn before [any judge of a county court, or before a master extraordinary in Chancery or] any person now authorised by law to take affidavits; and the fee for taking such affidavit shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served, the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit. *See pp. 123, 124, 219. So much of this section "as requires the service of a summons or other process to be proved by affidavit," is repealed by 38 & 39 Vict. c. 50, s. 12; and see sect. 3 of that Act. The words in brackets are repealed by 38 & 39 Vict. c. 66.*

Proof of service of process out of the district, or in the absence of the bailiff.

63. And be it enacted, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than 20*l.*, for which a plaint might be entered under this Act if not for more than 20*l.*, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.*; and the judgment of the court upon such plaint shall be in full

Demands not to be divided for the purpose of bringing two or more suits.

discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly. *See pp. 19, 20.*

Minors may sue for wages.

64. And be it enacted, that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any court holden under this Act for any sum of money not greater than 20*l.* which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age. *See p. 99.*

Cases of partnership and intestacy.

65. And be it enacted, that the jurisdiction of the county court under this Act shall extend to the recovery of any demand, not exceeding the sum of 20*l.*, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will. *See pp. 316, 317.*

Executors may sue and be sued.

66. And be it enacted, that it shall be lawful for any executor or administrator to sue and be sued in any court holden under this Act in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in any superior court. *See p. 98.*

No privilege allowed.

67. And be it enacted, that no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this Act. *See p. 12; as to attorneys, 12 & 13 Vict. c. 101, s. 18.*

One of several persons liable may be sued.

68. And be it enacted, that where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the county court under this Act contribution from any other person jointly liable with him. *See pp. 92, 93.*

Judge alone to determine all questions unless a jury be summoned.

69. And be it enacted, that the judge of the county court shall be the sole judge in all actions brought in the said court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any court holden under this Act. *See pp. 159, 180, 181.*

Actions may be tried by a jury when parties require it.

70. And be it enacted, that in all actions where the amount claimed shall exceed 5*l.* it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed 5*l.* it shall be lawful for the judge, in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions hereinafter contained:

provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as hereinafter provided; and the said clerk shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the clerk. *See pp. 159, 160.*

71. And be it enacted, that every party requiring any party to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of five shillings for payment of the jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the judge. *See p. 159.*

Party requiring jury to make a deposit.

72. And be it enacted, that the sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury-book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said sheriffs and high bailiffs shall be entitled to receive *out of the general fund of the court* a fee after the rate of twopence for every folio of seventy-two words; and whenever a jury shall be required, the clerk of the court shall cause so many of the persons named in the list as shall be needed in the opinion of the judge to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than 5*l.* for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury at the assizes, or any court of nisi prius, or at the central criminal court for the same county, within six calendar months next before the delivery of such summons. *See p. 161. Words in italics repealed by 38 & 39 Vict. c. 66.*

Who shall be jurors.

73. And be it enacted, that whenever there are any jury trials five jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said court, and being once

Number of the jury.



sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in any superior court; and the jurymen so sworn shall be required to give an unanimous verdict. *See p. 161.*

Proceedings on hearing the plaintiff.

74. And be it enacted, that on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in court the judge shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue. *See p. 180. See, as to judgment, 19 & 20 Vict. c. 108, s. 45; as to registry of judgments, 15 & 16 Vict. c. 54, s. 18.*

No evidence to be given that is not in summons.

75. And be it enacted, that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued. *See pp. 118, 175, 180.*

Notices to be given to the clerk of special defences, who shall communicate the same to the plaintiff.

76. And be it enacted, that no defendant in any court holden under this Act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any Statute of Limitations, or of his discharge under any statute relating to bankrupts, or any Act for relief of insolvent debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given the clerk of the court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk. *See p. 140.*

Suits may be settled by arbitration.

77. And be it enacted, that the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge; provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid. *See p. 170.*

Forms of procedure

78. And in any case not expressly provided for herein, or by the said rules, the general principles of practice in the



superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts. *See pp. 106, 107, 125, 169, 180, 267, 273, 312.* *This section, except as above, repealed by 19 & 20 Vict. c. 108, s. 32, and 38 & 39 Vict. c. 66.*

79. And be it enacted, that if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered; provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorised on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared. *See pp. 178, 183, 184, 249. Amended by 13 & 14 Vict. c. 61, s. 10.*

in courts to be framed by the judges.

Proceedings if plaintiff does not appear or prove his case.

80. And be it enacted, that if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the judge in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose. *See pp. 124, 179, 249; 30 & 31 Vict. c. 142, s. 16.*

Proceedings if the defendant does not appear.

81. And be it enacted, that the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit. *See p. 173.*

Judge may grant time.

82. And be it enacted, that it shall be lawful for the defendant in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the

Defendant may pay money into court.

Notice of such payment to be given to plaintiff.

time of such payment : and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business ; and the said sum of money shall be paid to the plaintiff ; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment ; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff. *See pp. 144, 145, 146, 260.*

Parties and others may be examined.

83. And be it enacted, that on the hearing or trial of any action or on any other proceeding under this Act the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court. *See pp. 156, 180.*

Persons giving false evidence guilty of perjury.

84. And be it enacted, that every person who in any examination upon oath or solemn affirmation before any judge of the county court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury. *See p. 354.*

85. *Repealed by 38 & 39 Vict. c. 50, s. 12. Substituted provisions, 38 & 39 Vict. c. 50, s. 2.*

Penalty on witnesses neglecting summons.

86. And be it enacted, that every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine not exceeding 10*l.*, as the judge shall set on him ; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the court in which the fine was imposed. *See pp. 156, 157, 356.*

Fines, how to be enforced and accounted for.

87. And be it enacted, that payment of any fine imposed by any court under the authority of this Act may be enforced upon the order of the judge in like manner as payment of any debt adjudged in the said court, and shall be accounted for as herein provided. *See pp. 157, 161.*

Costs to abide the event of the action.

88. And be it enacted, that all the costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and exe-

execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court. *See p. 190.*

89. And be it enacted, that every order and judgment of any court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings. *See pp. 183, 184, 185, 195, 343.*

Judgments,  
how far  
final.

90. And be it enacted, that no plaint entered in any court holden under this Act shall be removed or removable from the said court into any of Her Majesty's superior courts of record by any writ or process, unless the debt or damage claimed shall exceed 5*l.*, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit. *See p. 133.*

No actions  
to be re-  
moved into  
superior  
courts but  
on certain  
conditions.

91. And be it enacted, that no person, not being an attorney admitted to one of Her Majesty's superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than 40*s.*, or to have or recover more than 10*s.* for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*, or more than 15*s.* in any case within the summary jurisdiction given by this Act; and in no case shall any fee exceeding 1*l.* 3*s.* 6*d.* be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than 5*l.* is recovered, or in the case of a defendant where less than 5*l.* is claimed, or in any case unless by order of the judge. *Repealed, except as above, by 15 & 16 Vict. c. 54, s. 10. See 19 & 20 Vict. c. 108, s. 36; and pp. 190, 191, 193.*

Who may  
appear for  
any party  
in the superior  
courts.

92. And be it enacted, that the judge may make orders concerning the time or times, and by what instalments, any debt or damages or costs for which judgment shall be obtained in the said court shall be paid, and all such monies shall be paid into court unless the judge shall otherwise direct. *Repealed by 19 & 20 Vict. c. 108, s. 2. See 19 & 20 Vict. c. 108, s. 45. See p. 185.*

Payment by  
instalments.

93. And be it enacted, that if there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both judgments. *See p. 223.*

Cross  
judgments.

Court may  
award execution  
against  
goods.

94. And be it enacted, that whenever the judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue, under the seal of the court, a writ of *fieri facias* as a warrant of execution to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied, by distress and sale of the goods and chattels of such party, such sum of money as shall be so ordered, wheresoever they may be found within the district of the court, whether within liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant. *See pp. 222, 225, 226. As to where warrants may be executed, see 19 & 20 Vict. c. 108, s. 17. Priority of executions, 19 & 20 Vict. c. 108, ss. 46, 47.*

Execution  
not to issue  
till after  
default in  
payment of  
some instal-  
ment, and  
then it may  
issue for the  
whole sum  
due.

95. And be it enacted that if the judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court. *See pp. 187, 222.*

What goods  
may be  
taken in  
execution.

96. And be it enacted that every bailiff or officer executing any process of execution issuing out of the said county court against the goods and chattels of any person may, by virtue thereof, seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of 5*l.*, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid. *See p. 226.*

Securities  
seized to be  
held by the  
high bailiff.

97. And be it enacted, that the high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived. *See p. 227.*

98. Sections 98, 99, 100, and 101 are repealed by 32 & 33

*Vict. c. 83, s. 20. The provisions now affecting commitments are 9 & 10 Vict. c. 95, ss. 102, 103, 104, 110; 19 & 20 Vict. c. 108, s. 48; 32 & 33 Vict. c. 62, s. 5.*

102. And be it enacted, that whenever any order of commitment shall have been made as aforesaid the clerk of the said court shall issue under the seal of the court a warrant of commitment, directed to one of the bailiffs of any county court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law; [*and no protection, order, or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order.*] Words in brackets repealed by 19 & 20 Vict. c. 108, s. 2. See p. 244.

Mode of issuing and executing warrants of commitment.

103. Repealed by 38 & 39 Vict. c. 50, s. 12. See p. 245.

104. And be it enacted, that in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send such warrant of execution or of commitment to the clerk of any other court constituted under this Act, within the jurisdiction of which such party, or his goods and chattels, shall then be or be believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant issued, requiring execution of the same, and the clerk of the court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court, and thereupon such last-mentioned high bailiff shall be authorised and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all monies received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under

How execution may be had out of the jurisdiction of the court.

the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant. *See pp. 228, 246; 15 & 16 Vict. c. 54, s. 5.*

Power to judge to suspend execution in certain cases.

105. And be it enacted, that if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased. *See p. 197.*

Regulating the sale of goods taken in execution.

106. And be it enacted, that no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, to be put in possession by the bailiff; and it shall be lawful for the high bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisalment thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale. *See p. 227. Amended by 12 & 13 Vict. c. 101, s. 10.*

Amended by 12 & 13 Vict. c. 101, s. 10.

107. *As to the liability of goods taken in execution under 8 Anne, c. 17. Repealed by 13 & 14 Vict. c. 61, s. 20, and 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 75.*

No execution shall be stayed by writ of error.

108. And be it enacted, that no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or supersedeas thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this Act. *See p. 198.*



109. And be it enacted, that in or upon every warrant of execution issued against the goods and chattels of any person whomsoever the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty. *See pp. 224, 227.*

Execution to be superseded on payment of debt and costs.

110. And be it enacted, that any person imprisoned under this Act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by leave of the judge of the court in which the order of imprisonment was made. *This section is probably repealed; see ante, p. 246.*

Debtor to be discharged from custody upon payment of debt and costs.

111. And be it enacted, that the clerk of every court holden under this Act shall cause a note of all complaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof. *See pp. 185, 345.*

Minutes of proceedings to be kept.

112. And be it enacted, that the clerk or clerks of every such court shall in the month of March in each year make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court, and which shall have remained unclaimed for five years before the 1st day of the month of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court-house, and at all times in the clerk's office; and all sums of money which shall have been paid into any such court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any commissioner, trustee, judge, or officer of such court, or other-

Suitors' money unclaimed in six years to go to general fund.



wise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into court, be applicable as part of the general fund of the court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or *feme covert* or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years. *See p. 334.*

Power of committal for contempt.

113. And be it enacted, that if any person shall wilfully insult the judge or any juror, or any bailiff, clerk, or officer of the said court, for the time being, during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding 5*l.* for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid. *See p. 353, and sect. 49, ante. As to what prison, see 12 & 13 Vict. c. 101, ss. 2, 3, and 5, amending this section.*

Penalty for assaulting bailiffs or rescuing goods taken in execution.

114. And be it enacted, that if any officer or bailiff of any court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding 5*l.*, to be recovered by order of the court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the bailiff of the court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such court or justice accordingly. *See pp. 133, 354.*

Bailiffs made answerable for escapes and neglect to levy execution.

115. And be it enacted, that in case any bailiff of the said court who shall be employed to levy any execution against goods and chattels shall, by neglect, or connivance or omission, lose the opportunity of levying any such execution, then, upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and

satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court. *See pp. 84, 199, 346.*

116. And be it enacted, that if any clerk, bailiff, or officer of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding 10*l.* for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court. *See p. 351.*

Remedies against and penalties on bailiffs and other officers for misconduct.

117. And be it enacted, that every treasurer, clerk, bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said court, and in the case of a clerk, treasurer, or high bailiff on allowance of the finding of the court by the lord chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided. *See pp. 342, 351.*

Penalty on officers taking fees besides those allowed.

118. *Repealed by 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 19 & 20 Vict. c. 108, s. 72; 30 & 31 Vict. c. 142, s. 31.*

119. And be it declared and enacted, that all actions of replevin in cases of distress for rent in arrear or damage *faisant* which shall be brought in the county court shall be brought without writ in a court held under this Act. *See p. 272.*

Actions of replevin may be brought without writ.

120. And be it enacted, that in every such action of replevin the plaint shall be entered in the court holden under this Act for the district wherein the distress was taken. *See p. 272.*

Plaints, where to be entered.

121. *Repealed by 19 & 20 Vict. c. 108, s. 2. See 19 & 20 Vict. c. 108, ss. 63—68.*

122, 123, 126, 127. *Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, ss. 50—56. See p. 287.*

124. And be it enacted, that it shall not be lawful to bring any action or prosecution against the judge or against the clerks,

Judges, where to be entered.

bailiffs, or other officers not liable to actions on account of proceedings taken.

clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises. *See pp. 292, 350.*

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

125. And be it enacted, that where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding 5s., the plaintiff shall recover no more costs and damages, unless the judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed. *See p. 292.*

128, 129. *Concurrent jurisdiction—Costs. Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, ss. 1, 5.*

Penalties and costs to be recovered before a justice, and levied by distress.

130. And be it enacted, that all penalties, fines, and forfeitures by this Act inflicted or authorised to be imposed (the manner of recovering and applying whereof is not hereby otherwise directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale are deducted, shall be returned, upon demand, unto the owner of such goods and chattels. *See p. 356.*

In default of security, offender may be detained till return of warrant of distress.

131. And be it enacted, that if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such justice shall be empowered to take by way of recognisance, or otherwise, as to him shall seem fit. *See p. 356.*



making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining; but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case. *See p. 350; 19 & 20 Vict. c. 108, s. 60.*

Limitation of actions for proceedings in execution of this Act.

138. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards; and notice in writing of such action and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant. *See pp. 110, 352. Amended by 15 & 16 Vict. c. 54, s. 6. See 13 & 14 Vict. c. 64, s. 19; 19 & 20 Vict. c. 108, ss. 21, 60, and pp. 55, 350.*

Costs.

139. *Repealed by 19 & 20 Vict. c. 108, s. 2.*

Act not to affect rights of universities of Oxford or Cambridge.

140. Provided always, and be it enacted, that nothing in this Act contained shall be construed to alter or affect the rights or privileges of the chancellor, masters, and scholars of the Universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the chancellors or vice-chancellors of the said universities as holden under the respective charters of the said universities, or otherwise. *See p. 11; as to equity, 28 & 29 Vict. c. 99, s. 6.*

Nothing to affect the courts of the wardens of the stannaries.

141. Provided always, and be it declared and enacted, that nothing in this Act contained shall be construed to affect the courts of the lord warden or of the vice-warden of the stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any court under this Act within the said stannaries, or to limit or affect the jurisdiction of any court so established under this Act. *See p. 12.*

Interpretation of Act.

142. And be it enacted, that in construing this Act all things directed or authorised to be done by or with respect to the lord chancellor shall and may be done by or with respect to a lord keeper or the first commissioner for the custody of the Great Seal of the United Kingdom of Great Britain and Ireland; and all things directed or authorised to be done by or with respect to the commissioners of Her Majesty's Treasury shall and may be done by and with respect to three or more of the said commissioners or the lord high treasurer; and the word "person" shall be understood to mean a body politic, corporate, or collegiate, as well as an individual; and every word importing the singular number shall, where necessary to

give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; and the words "county court" shall be understood to mean any court holden under this Act; and the term "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word "clerk" shall be understood to mean "chief clerk," or "registrar," and the words "attorney at law" shall be understood to include a solicitor in any court of equity; and the word "agent" shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorised to act in any particular matter by writing under the hand of such landlord; and the word "bailiff" shall be understood to include high bailiff; unless in any of these cases there be something in the context inconsistent with such meaning. See p. 344. Words as to agent repealed by 19 & 20 Vict. c. 108, s. 2.

143. Repealed by 38 & 39 Vict. c. 66.

#### SCHEDULE A.

Acts for the more easy and speedy recovery of small debts within certain specified towns, parishes, and places, and other parishes and places adjacent.

#### SCHEDULE B.

Acts for the more easy and speedy recovery of small debts within certain specified towns, parishes, and places, and other parishes and places adjacent.

*The list of towns and Acts mentioned in the above schedules are omitted on account of its being rarely necessary to refer to them for any purpose.*

#### SCHEDULE C.

| Town.             | Officer of the Court.                                 | Person to whom the next appointment is to belong.    |
|-------------------|-------------------------------------------------------|------------------------------------------------------|
| Ashton-under-Lyne | Clerk of the court to be holden at Ashton.            | Lord of the manor of Ashton-under-Lyne.              |
| Birmingham        | High bailiff of the court to be holden at Birmingham. | Lord of the manor of Birmingham.                     |
| Cirencester.      | Clerk of the court to be holden at Cirencester.       | Lord of the manor and seven hundreds of Cirencester. |

SCHEDULE C—*continued*.

| Town.         | Officer of the Court.                              | Person to whom the next appointment is to belong.                                                                                                                                                                 |
|---------------|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Kidderminster | Clerk of the court to be holden at Kidderminster.  | Lord of the manor of the borough of Kidderminster.                                                                                                                                                                |
| Stourbridge   | Clerk of the court to be holden at Stourbridge.    | Lord of the manor of Old Swinford or Anblecoat, to whom, on the day before the passing of this Act, the next turn belongs to appoint the clerk or beadle of the Court of Requests for the parish of Old Swinford. |
| St. Albans.   | High bailiff of the court to be holden at Watford. | Lord of the hundred of Cashio.                                                                                                                                                                                    |
| Sheffield .   | Judge of the court to be holden at Sheffield.      | Lord of the manor of Sheffield.                                                                                                                                                                                   |
|               | Clerk of the court to be holden at Sheffield.      | Lord of the manor of Ecclesall.                                                                                                                                                                                   |
| Stockport .   | Clerk of the court to be holden at Stockport.      | Lord of the manor and barony of Stockport.                                                                                                                                                                        |

## SCHEDULE D.

*Repealed by 38 & 39 Vict. c. 66.*

## THE COUNTY COURTS ACT, 1849.

[12 & 13 VICT. c. 101; August 1, 1849.]

To what prisons persons may be committed under recited Act for frauds, &c.

It shall be lawful for any judge who would have been authorised under the said Act to order any party or defendant to be committed as aforesaid for any such period as aforesaid, to order such party or defendant to be committed *for the like period* to the common gaol wherein the debtors under judgment and in execution of the superior courts of justice may be confined for the county, city, borough, or place in which such party or defendant is resident, or to any other gaol or debtors'



prison for the same county, city, borough, or place which shall by any declaration of one of Her Majesty's principal secretaries of state be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or shall be provided as in the said Act mentioned as the prison of the court by the judge of which such order may be made; and all the provisions of the said Act applicable to and consequent upon the order for commitment under the power hereinbefore repealed, and to the prisons to which persons might be committed under such order, shall apply to and be construed with reference to any order made under the power hereinbefore contained, and the prisons to which persons may be committed under such order. *See pp. 244, 353; 19 & 20 Vict. c. 108, s. 71. Repealed, except as above, by 38 & 39 Vict. c. 66.*

2. In any case in which any judge would under such enactment have been authorised to commit any such offender to any such prison as therein mentioned, for such period as therein mentioned, such judge shall be empowered, if he think fit, by warrant, as therein mentioned, to commit such offender for the like period to any common gaol wherein the debtors under judgment and in execution of the superior courts of justice may be confined, for any county, city, borough, or place wholly or in part within any district of such judge, or to any other gaol or debtors' prison for any such county, city, borough, or place which shall by declaration as aforesaid be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or may be provided, as in the said Act mentioned, as the prison of the court by the judge of which such offender shall be committed. *See p. 353. Repealed, except as above, by 38 & 39 Vict. c. 66.*

3. Provided always, and be it enacted, that where, by reason of any common gaol wherein debtors under judgment and in execution of the superior courts of justice may be confined being situated at an inconvenient distance, or of the crowded state of any such gaol, or otherwise, it shall appear to one of Her Majesty's principal secretaries of state expedient so to do, it shall be lawful for such secretary of state, by order under his hand, to authorise to be used for the purposes of commitments under the said Act of the tenth year of Her Majesty any house of correction or common gaol in which such debtors as aforesaid may not be confined (to be mentioned in such order), and to make orders for altering the regulations of such house of correction or gaol as last aforesaid, so far as respects the treatment of persons to be committed under this Act, in order that such persons may be treated as nearly as may be in like manner as if they had been committed to a gaol in which such debtors as aforesaid may be confined, notwithstanding the regulations in force in such house of correction or gaol to which such persons may be committed; and every such order may from time to time be revoked or varied by such secretary of state as occasion may require. *See pp. 244, 353.*

9 & 10 Vict.  
c. 95, s. 99.

To what  
prisons  
persons  
may be  
committed  
under the  
said Act for  
contempt.

9 & 10 Vict.  
c. 95, s. 113.

Where  
debtors'  
prison is  
situated at  
an incon-  
venient  
distance, or  
crowded,  
secretary of  
state may  
authorise  
commit-  
ment to  
house of  
correction.

4. *Repealed by 38 & 39 Vict. c. 66.*9 & 10 Vict.  
c. 95.

5. And whereas by the said Act of the tenth year of Her Majesty it was enacted, "that it should be lawful for any court holden under that Act, with the approval of one of Her Majesty's principal secretaries of state, to use as a prison for the purposes of that Act any prison then belonging to any court holden under any of the Acts cited in the schedules A and B to that Act, in all cases where it should appear to the said secretary of state that the common gaol or house of correction of the county, district, or place in which the court was established was inconveniently situated, or was not applicable for the use of the said courts; and whenever any such prison should be so allowed to be used it should be deemed one of the common gaols of the county for which it should be used, as if it had been provided after presentment of the insufficiency of one common gaol for such county under the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled an Act to amend the laws concerning prisons:" and whereas a prison used under the said recited enactment for a division of a county may be deemed a gaol for the county at large: be it declared and enacted, that where a prison allowed to be used with the approval of such secretary of state shall be so used for any riding, parts, or division of a county having a distinct commission of the peace, or a distinct rate in the nature of a county rate applicable to the maintenance of a prison for such riding, parts, or division (and not for the county at large), such prison shall be deemed one of the common gaols for the riding, parts, or division for which it is so used (and not for the county at large), as if it had been provided after presentment of the insufficiency of one common gaol for such riding, parts, or division under the said Act of the sixth year of Her Majesty. *See pp. 244, 353.*

9 & 10 Vict.  
c. 95, s. 49.5 & 6 Vict.  
c. 98.

A prison used under recited enactment for any riding, parts, or division of a county to be deemed a common gaol for such riding, parts, or division.

6. *Repealed by 19 & 20 Vict. c. 108, s. 2.*

7. *Repealed by 38 & 39 Vict. c. 66. See 9 & 10 Vict. c. 95, s. 44.*

8. *See note to 9 & 10 Vict. c. 95, s. 50. Repealed by 38 & 39 Vict. c. 66.*

9. *Virtually repealed by 19 & 20 Vict. c. 108, s. 85. Expressly repealed by 38 & 39 Vict. c. 66.*

Judge may authorise bailiffs to act as brokers.

10. And be it enacted, that it shall be lawful for the judge of any court holden under the said Act of the tenth year of Her Majesty, by any writing under his hand, to authorise any of the bailiffs appointed by the high bailiff under the said Act to act as brokers or appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under the said Act; and the bailiffs so authorised by the judge may, without other licence in this behalf, do and perform all the duties and shall be entitled to the poundage which sworn brokers or appraisers may now do and perform and are entitled to under the said Act. *See p. 228.*

9 & 10 Vict.  
c. 95, s. 106.

11. *Repeals part of 9 & 10 Vict. c. 95, s. 8. Repealed by 38 & 39 Vict. c. 66. See p. 322.*

12. *Repealed by 38 & 39 Vict. c. 66. Substituted provisions, 19 & 20 Vict. c. 108, s. 32. See p. 343.*

*Sections 13, 14, and 15, as to Marshalsea, Palace, and Peveril courts, repealed by 38 & 39 Vict. c. 66.*

16. *Records of abolished courts to be placed under the charge of master of the rolls under 1 & 2 Vict. c. 94. Part repealed by 38 & 39 Vict. c. 66.*

17. *Compensation to officers of abolished courts. Part repealed by 38 & 39 Vict. c. 66.*

18. And be it enacted, that no privilege shall be allowed to any attorney, solicitor, or other person, to exempt him from the provisions of this Act or the said Act for the more easy recovery of small debts and demands in England. *See p. 12; 9 & 10 Vict. c. 95, s. 67.*

Attorneys and solicitors not exempt from provisions of this Act.

## THE COUNTY COURTS ACT, 1850.

[13 & 14 Vict. c. 61; August 14, 1850.]

BE it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the jurisdiction of the several courts holden or to be holden under the said Act of the tenth year of Her Majesty shall extend to the recovery of any debt, damage, or demand not exceeding the sum of 50*l.*, and to all actions in respect thereof (save and except the several actions specified in the proviso in sect. 58 of the same Act); and that the several powers and provisions of the said several Acts of the tenth and thirteenth years of Her Majesty, and all rules, orders, and regulations which have been or may be made in pursuance of the said Acts or either of them, shall extend to all debts, damages, and demands which may be sued for in the said courts or any of them not exceeding the sum of 50*l.*, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively are now or may be applicable to debts, damages, and demands within the present jurisdiction of the said courts. *See pp. 8, 13, 16, 22; 9 & 10 Vict. c. 95, s. 58.*

Extension of jurisdiction.

12 & 13 Vict. c. 101.

2. *Act to be construed with 9 & 10 Vict. c. 95, and 12 & 13 Vict. c. 101.*

3. And be it enacted, that no deputy judge of any such county court, save and except the Westminster county court of Middlesex, shall, during the time he acts or shall be entitled to act as such deputy, practise as a barrister in any court within the district for which he acts or shall be entitled to act as such deputy; and that every clerk and assistant clerk appointed after the passing of this Act to any of such courts shall reside within the district of the court or courts for which he shall have been appointed. *See pp. 327, 330; 9 & 10 Vict. c. 95, ss. 20, 24, 25; 19 & 20 Vict. c. 108, s. 6.*

Deputy judge not to practise in district whilst he acts as deputy.

Clerks, &c. to reside in district.

Power to  
remove  
clerks, high  
bailiffs, or  
assistant  
clerks.  
9 & 10 Vict.  
c. 95, ss. 24,  
31.

4. And be it enacted, that *so much of the said Act of the tenth year of Her Majesty as relates to the removal of clerks or high bailiffs of the courts holden under the said Act shall be repealed*; and it shall be lawful for the lord chancellor, or, where the whole of the district of the court or courts for which the clerk or high bailiff shall have been appointed is within the Duchy of Lancaster, for the chancellor of the Duchy of Lancaster, when such lord chancellor or chancellor of the duchy shall in his discretion think fit, to remove the clerk, high bailiff, or any assistant clerk of any such court or courts from his office, and from time to time to make such order as to the attendance of any clerk, deputy clerk, or assistant clerk, during the sitting of the court or otherwise, as he shall think fit: provided always, that nothing herein contained shall affect the tenure of office of any person who before the passing of the said Act held an office in any of the courts mentioned in the schedule (A) annexed to the said Act. *See pp. 331, 336. Words in italics repealed by 38 & 39 Vict. c. 66.*

5. *Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 78.*

6. *Repealed by 19 & 20 Vict. c. 108, s. 2. See 19 & 20 Vict. c. 108, ss. 33—35.*

7. *Repealed by 19 & 20 Vict. c. 108, s. 2.*

Confession  
of debts or  
parts of  
debts, &c.,  
and judg-  
ment there-  
upon.

8. And be it enacted, that any person against whom a plaint shall be entered in any county court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of the clerk or assistant clerk of the court in which such plaint shall have been entered, or one of their clerks respectively, or in the presence of an attorney of one of the superior courts, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand for which such plaint shall have been entered, and such clerk or assistant clerk shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, by the post or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand so confessed and admitted as aforesaid, but the judge of such court, at the next sitting of such court, whether the parties or either of them attend such court or not, shall, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the clerk or assistant clerk, proceed to give judgment for the debt or demand so confessed and admitted, in the same manner, and subject to the same conditions, as if he had tried the cause, and given judgment thereupon, under the provisions of the said first-recited Act. *See p. 130.*

Agreement  
as to the  
amount of  
debts, &c.,  
and con-  
ditions of  
payment.

9. And be it enacted, that if the person against whom a plaint shall be entered in any county court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid or satisfied, it

shall be lawful for such persons respectively, in the presence of the clerk or assistant clerk of the court in which such plaint shall have been entered, or one of their clerks respectively, or in the presence of an attorney of one of the superior courts, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, such clerk or assistant clerk shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the clerk or assistant clerk, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the judge of the said court. *See p. 131; 30 & 31 Vict. c. 142, s. 17.*

10. And be it enacted, that in every case where the plaintiff shall not appear, either by himself or his attorney, upon the day of the return of any summons for hearing, or at any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the judge to award to the defendant or to his attorney, by way of costs of his attendance and satisfaction for his trouble, such sum as the judge in his discretion shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered. *See pp. 178, 249.*

If plaintiff or his attorney do not appear on the day of hearing, costs may be awarded to defendant for his trouble and attendance. 9 & 10 Vict. c. 95, s. 79.

11. *Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, s. 5.*

12. *Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, s. 5.*

13. *Repealed by 15 & 16 Vict. c. 54, s. 4. See 30 & 31 Vict. c. 142, s. 5.*

14. And be it enacted, that if either party in any cause of the amount to which jurisdiction is given to the county courts by this Act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the superior courts of common law at Westminster, two or more of the puisne judges whereof shall sit out of term as a court of appeal for that purpose, provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security, to be approved by the clerk of the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the

Parties aggrieved may appeal.

county court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the county court in which such action shall have been tried, and the same shall have been paid accordingly ; and the said court of appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper ; and such orders shall be final. *See pp. 198, 200, 212. Repealed in part and amended by 15 & 16 Vict. c. 54, s. 2. Appeal extended by 19 & 20 Vict. c. 198, s. 68 ; 30 & 31 Vict. c. 142, s. 13. Equity, 28 & 29 Vict. c. 99, s. 18.*

Appeal to be in the form of a case agreed on by both parties, but if they cannot agree judge to settle and sign it.

15. And be it enacted, that such appeal shall be in the form of a case agreed on by both parties or their attorneys, and if they cannot agree the judge of the county court, upon being applied to by them or their attorneys, shall settle the case and sign it ; and such case shall be transmitted by the appellant to the rule department of the master's office of the court in which the appeal is to be brought. *See pp. 198, 206 ; 38 & 39 Vict. c. 50, s. 6.*

No *certiorari*, &c. to be allowed.

16. And be it enacted, that no judgment, order, or determination given or made by any judge of a county court, nor any cause or matter brought before him or pending in his court, shall be removed by appeal, motion, writ of error, *certiorari*, or otherwise, into any court whatever, save and except in the manner according to the provisions hereinbefore mentioned. *See p. 195.*

17. *Repealed by 19 & 20 Vict. c. 108, s. 2. See 19 & 20 Vict. c. 108, ss. 23, 25.*

No second suit in second court for the same cause.

18. And be it enacted, that if any party shall sue another in any county court for any debt or other cause of action for which he hath already sued him, and obtained judgment, in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party. *See p. 184.*

Treble costs.

No action to be brought against bailiff, &c. acting under order of the court without notice ; and clerk of the court to be made defendant in the suit.

19. And be it enacted, that from and after the passing of this Act no action shall be brought against any high bailiff or bailiff, or against any person or persons acting by the order and in aid of any high bailiff, for anything done in obedience to any warrant under the hand of the clerk or clerks of the said court and the seal of the said court, until demand hath been made or left at the office of such high bailiff by the party or parties intending to bring such action, or by his, her, or their attorney or agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected by the space of six days after such demand ; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such high bailiff, bailiff, or other person or persons acting in his aid, for any



such case as aforesaid, without making the clerk or clerks of the said court who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such clerk or clerks, and also against such high bailiff or bailiff, or person or persons acting in his or their aid as aforesaid, then on proof of such warrant the jury shall find for such high bailiff or bailiff, and for such person or persons so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said clerk or clerks, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid; and if any action shall be brought the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial had thereupon. See pp. 106, 351; 9 & 10 Vict. c. 95, s. 33; 15 & 16 Vict. c. 54, s. 6. Words in italics repealed by 38 & 39 Vict. c. 66.

20. Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 75.

21. Repealed by 19 & 20 Vict. c. 108, s. 2. See 19 & 20 Vict. c. 108, s. 75.

22. And be it enacted that it shall be lawful for any judge of any of Her Majesty's superior courts of common law at Westminster, *as well in term time as in vacation*, to hear and determine applications for writs of prohibition directed to the judges of the said county courts, and to make such rules or orders for the issuing of such writs as might have been made by the court; and all such rules or orders so made by any such judge shall have the same force and effect as rules of court for such purposes now have, and such writs shall be issued by virtue of such rules or orders *as well in term time as in vacation*: provided always, that any rule or order made by any such judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the court, on application made thereto by any party dissatisfied with such rule or order. See 19 & 20 Vict. c. 108, ss. 40—42, 44. Words in italics repealed by 38 & 39 Vict. c. 66. See p. 81.

Judges may hear applications for writs of prohibition either in term or in vacation.

23. Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 58.

24. And be it enacted, that in every town or place where there shall be a court holden under the provisions of the said Act of the tenth year of Her Majesty, the town hall, court house, or other public building belonging to any county, city, borough, or town shall be used for the purposes of holding the courts under the said Act, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning when such public building

Town hall, &c. to be used free of rent-charge for sittings of county court.



is used for the purpose of the courts, and for all other expenses necessarily incidental to the use of the said building for the purposes of the courts: provided always, that the necessary arrangements shall be made so that the sittings of the said courts shall not interfere with the business of the county, city, borough, or town usually transacted in such town hall, court house, or other public building, or with any purposes for which such town hall, court house, or other public building may be used by virtue of any local Act in that behalf: provided also, that this enactment shall not apply to any city, borough, or town in which a building hath previously to the passing of this Act been erected for the purposes of holding the courts under the said Act and for the business connected with such courts, nor shall anything in this Act contained be held, deemed, or taken to prejudice, affect, or otherwise interfere with any lease, contract, agreement, or engagement already entered into for the leasing, erection, hiring, or occupation of any building for the purposes of holding such courts therein and transacting therein the business relating to such courts. See p. 325.

## THE COUNTY COURTS ACT, 1852.

[15 & 16 Vict. c. 54; June 30, 1852.]

1. *Repealed by 19 & 20 Vict. c. 108, s. 2. Substituted provisions, 19 & 20 Vict. c. 108, s. 33.*

So much of 13 & 14 Vict. c. 61, s. 14, as limits the sitting of court of appeal to a time out of term repealed. Appeals to be heard in term as well as out of term.

2. *So much of the 13 & 14 Vict. c. 61, s. 14, as limits the court of appeal to the puisne judges of the superior courts of common law at Westminster, and the sitting of the said court of appeal to a time out of term, is hereby repealed; and all appeals now depending or hereafter to be brought before the said superior courts shall be heard and determined in term by the judges thereof, as part of the ordinary business of such courts, or out of term by any two or more of the judges of the said superior courts sitting as a court of appeal for that purpose. See p. 198. Words in italics repealed by 38 & 39 Vict. c. 66.*

Power to judges of superior courts to make orders regulating appeals.

3. The judges of the said superior courts, or any five of them, of whom a chief of one of the said superior courts shall be one, may from time to time make general orders for regulating the proceedings on appeals, which orders shall be as valid as if included in this Act, but shall not be in force until the end of the session of Parliament next after the promulgation thereof. See p. 198.

4. *Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, s. 5.*

Re-issuing warrants of distrain.

5. That in all cases where a warrant of execution shall have been issued against the goods and chattels of any person, or an order for his commitment been made, and such person or his goods and chattels shall be out of the jurisdiction of the court, and such warrant or order shall have been sealed and stamped by the clerk of another county court, pursuant to the 101th section of the Act of the 9 & 10 Vict. c. 95, it shall be

lawful for the said clerk of such other court to reissue the said warrant or order to the high bailiff of such other court, and thereupon such high bailiff shall be authorised and required to act in all respects in the execution of the said warrant or order within the jurisdiction of the court to which the same shall have been so sent in the same manner, with the same powers, and subject to the same rules as if the district to which the warrant or order shall have been sent were within the limits of the court which originally issued the warrant or order. *See p. 228.*

6. If any action or suit shall be brought against any person for anything done in pursuance of this Act, or of any other Act relating to county courts, such person may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the county court, being produced in any such action or suit, shall be deemed sufficient proof of the authority of the said county court previous to the issuing of such warrant; and in case the plaintiff in such action shall have a verdict pass against him, he nonsuit, or discontinue the action or suit, the defendant shall in any of the said cases be allowed full costs as between attorney and client. *See p. 352; 9 & 10 Vict. c. 95, s. 138; 13 & 14 Vict. c. 64, s. 19; 19 & 20 Vict. c. 108, ss. 21, 60.*

Protection  
to officers.

7. If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a court of local jurisdiction other than a county court is established, under the said Act of the 9 & 10 Vict. c. 95, or into the limits of which the jurisdiction of such court of local jurisdiction shall extend, shall petition the Queen in Council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the county court hath cognisance, and if notice of such petition shall be given two months before it is presented, by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, Her Majesty, by Order in Council, may declare such exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such county court, if no petition against declaring such exclusion be presented, and no caveat be entered at the Council office, and if any counter petition be presented or any caveat be entered, then Her Majesty may refer such petition and counter petition to the Judicial Committee of the Privy Council, upon whose report Her Majesty may make such Order in Council as she shall be advised touching the matter of the said petitions in respect of excluding the jurisdiction of such court of local jurisdiction, and may award compensation to any person or persons entitled to the franchise of appointing officers of such court, or to any officers thereof appointed before the passing of this Act, to be given by the Commissioners of Her Majesty's Treasury, who are hereby empowered to pay the same. *See p. 322.*

On petition  
to Her  
Majesty, the  
jurisdiction  
of court of  
local juris-  
diction may  
be excluded  
from that of  
the county  
court in  
concurrent  
causes.

8. *As to audit and insolvents' estates. This section is practically obsolete; and see 29 Vict. c. 14, ss. 1—7.*

Account of fees to be delivered.

9. The clerk and the high bailiff of every county court shall deliver quarterly to the treasurer, in such form as the treasurer, by direction of the said commissioners, shall require, a full account in writing of the fees from time to time received by them respectively under the Act of the 9 & 10 Vict. c. 95. *See pp. 333, 339; 9 & 10 Vict. c. 95, s. 41.*

Provision of 9 & 10 Vict. c. 95, as to persons qualified to practise before county courts not to extend to this Act.

10. *And whereas by the said Act passed in the ninth and tenth years of Her present Majesty it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said courts "unless he be an attorney of one of Her Majesty's superior courts of record, or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under that Act;" be it enacted, that the said last-recited enactment be repealed; and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of Her Majesty's superior courts of record being an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or, by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court. See p. 177. Words in italics repealed by 38 & 39 Vict. c. 66.*

9 & 10 Vict. c. 95, s. 91.

*Sections 11, 12, and 13, relating to Offlow and Hemingford Hundred courts, repealed by 38 & 39 Vict. c. 66.*

14. *Amended by 19 & 20 Vict. c. 108, ss. 81, 82. Repealed by 38 & 39 Vict. c. 66.*

Lord chancellor may order retiring pension to be paid to county court judges.

15. That it shall be lawful for the lord chancellor, from time to time, on a petition presented to him for that purpose, to recommend to the Commissioners of Her Majesty's Treasury that there shall be paid quarterly out of the said consolidated fund to such of the judges of the county courts as shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such judge shall be entitled to as a judge of county court at the time of presenting his petition; and such annuity or sum shall be paid out of the said consolidated fund quarterly or otherwise, as the said commissioners may direct. *See p. 327; 28 & 29 Vict. c. 99, s. 13.*

Judges of county courts not to practise as special pleaders.

16. *After three months from the passing of this Act no judge of the said county courts shall practise at the bar, or as a special pleader or equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, solicitor, attorney, or proctor. See p. 326. Words in italics repealed by 38 & 39 Vict. c. 66.*

17. *This section was impliedly repealed as to future appointments by 19 & 20 Vict. c. 108, s. 8. Now expressly repealed by 38 & 39 Vict. c. 66.*

18. That a registry of every judgment entered in the county courts for the sum of 10*l.* and upwards shall be formed in such manner, in such place, and under such regulations as the Commissioners of Her Majesty's Treasury shall appoint, and that for the inspection of the said register when formed such fees shall be charged to persons desirous of inspecting the same as shall be appointed by the said commissioners, and the proceeds of such fees shall be applied in such manner as the said commissioners shall appoint, in paying the expenses incurred in establishing and maintaining the said register, and the surplus of such fees, after providing for the payment of such expenses, shall be paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland. *See p. 188; 9 & 10 Vict. c. 95, s. 74, 19 & 20 Vict. c. 108, s. 45, 17 & 18 Vict. c. 16, s. 2, and 27 & 28 Vict. c. 99, s. 15.*

A registry of county courts' judgments to be established.

19. *Repealed by 38 & 39 Vict. c. 66.*

17 *Vict. c. 16, extending right of appeal to cases of jurisdiction by consent and extending protection from process, repealed by 38 & 39 Vict. c. 66.*

## THE COUNTY COURTS ACT, 1856.

[19 & 20 *Vict. c. 108; July 29, 1856.*]

1. *Commencement of Act. Repealed by 38 & 39 Vict. c. 66.*

2. The several enactments specified in schedule A to this Act are hereby repealed, except as to acts done under them. *Enactments repealed.*  
*Repealed by 38 & 39 Vict. c. 66.*

3. *Construction of Act.*

4. The provisions of this Act and of the recited Acts which apply to any debt not exceeding 20*l.* shall apply to such debt or any part thereof, although the same shall be secured by or claimed upon bill of exchange or promissory note, and notwithstanding the statute of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter 67. *This Act and those above recited to apply to debts sued for under 18 & 19 Vict. c. 67. See p. 263.*

5. Where the time within which or where the mode in which any proceeding should be taken in the county court is not prescribed either in this Act or in any Act relating to the county courts, such time and mode shall be appointed by the rules of practice, orders, and forms to be made as hereinafter provided. *Time and mode of certain proceedings to be regulated by rules of practice. See p. 313; 19 & 20 Vict. c. 108, s. 32.*

6. Any person hereafter to be appointed a deputy to the judge of a county court shall be a barrister-at-law of seven years' standing, or shall have practised as a barrister and special pleader for at least seven years, or shall be a judge of a county court. *Qualification of deputy judge. See p. 327; 9 & 10 Vict. c. 95, s. 20; 13 & 14 Vict. c. 61, s. 3.*

Where a court cannot be held, proceedings to stand adjourned.

7. Where by reason of the death or unavoidable absence of the judge a county court cannot be held, the registrar, or in the event of his unavoidable absence, the high bailiff, shall adjourn the court to such day as he may deem convenient, and enter in the minute-book the cause of such adjournment. *See p. 329.*

Clerk to be called registrar.

8. The clerk of the county court shall hereafter be called the registrar of the court, and henceforth no person shall be appointed registrar of more than one court. *See p. 330; 9 & 10 Vict. c. 95, ss. 24, 25.*

Registrar of more than one court to cease to be the registrar of all but one of such courts.

9. From and after the 1st day of October, 1856, a registrar of more than one county court shall cease to be the registrar of all of the courts of which he is the registrar, except of that court of which he may, by writing addressed to the judge of such court, have elected to remain the registrar: provided always, that this provision shall not apply to any registrar who was clerk to any court mentioned in schedule A or B to the Act passed in the ninth and tenth years of the reign of Her present Majesty, chapter 95, unless such registrar shall, by writing addressed to the judge of such courts, have signified his desire that it should apply to him. *See p. 330.*

#### 10. Compensation to such registrars.

Deputy of judge to continue to act after death of judge till a new one is appointed.

11. The appointment of a deputy of a judge of a county court, whether such deputy shall have been appointed by the judge or by the lord chancellor, or by the chancellor of the Duchy of Lancaster, shall not be vacated by the death of the judge, but his acts done after such death shall be as valid as if the judge had not died, and he shall continue to act in all the courts of the district of which the deceased was judge until the lord chancellor, or, where the whole of such district is within the Duchy of Lancaster, until the chancellor of that duchy shall otherwise order, or a successor to such judge shall be appointed; and such deputy shall receive as remuneration for the period that he may act as deputy, after the death of the judge, such sum as the lord chancellor shall direct, or if the successor of the deceased judge be appointed by the chancellor of the Duchy of Lancaster, then as the said chancellor of the duchy shall direct, and such sum shall be deducted from the salary and travelling allowance of the judge appointed to succeed the deceased judge; and the provisions of this section shall apply to all acts done by any deputy prior to the commencement of this Act. *See pp. 186, 328; 9 & 10 Vict. c. 95, s. 20, 13 & 14 Vict. c. 61, s. 3, 19 & 20 Vict. c. 108, s. 6, and 30 & 31 Vict. c. 142, s. 20. Words in italics repealed by 38 & 39 Vict. c. 66.*

Remuneration to deputy judge.

Deputy of registrar to continue to act after death or removal of registrar. Remuneration to deputy registrars.

12. The appointment of a deputy of a registrar shall not be vacated by the death or removal of the registrar, but his acts done after such death or removal shall be as valid as if the registrar had not died or been removed, and he shall continue to act until a successor to such registrar shall be appointed; and he shall receive as remuneration for his services during the period he may so act after the death or removal of the registrar a rateable proportion of the salary attached to the office of registrar. *See p. 331; 9 & 10 Vict. c. 95, s. 26.*

13. On the death or removal of a registrar who shall not have appointed a deputy, the judge may for a period not exceeding three months, provisionally appoint a person to discharge the duties of registrar; and such person shall act as and have all the rights and liabilities of a registrar until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of registrar. *See p. 331.*

Judge to appoint deputy registrar provisionally if one has not been appointed. Remuneration to deputy registrar.

14. The appointment of the bailiffs who are appointed to assist the high bailiff shall not be vacated by the death or removal of the high bailiff, but their acts done after such death or removal shall be as valid as if the high bailiff had not died or been removed, and had authorised such acts, and they shall continue to act until they shall be dismissed by the successor of the high bailiff or by the judge; and they shall be paid for their services during the period they shall so act after the death or removal of the high bailiff the same wages as they were receiving at the date of such death or removal, and such wages shall be paid out of the salary and allowances attached to the office of high bailiff. *See p. 337; 9 & 10 Vict. c. 95, s. 31.*

Assistant bailiffs to continue to act after removal of high bailiff.

Remuneration to bailiffs.

15. *Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, s. 1.*

16. On the death or removal of a high bailiff, the judge may, for a period not exceeding three months, provisionally appoint a person to discharge the duties of high bailiff; and such person shall act as and have all the rights and liabilities of a high bailiff until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he shall so act a rateable proportion of the salary and allowances attached to the office of high bailiff. *See pp. 336, 337; 29 Vict. c. 14, s. 11.*

On death, &c., of high bailiff, judge to appoint provisionally a deputy.

Remuneration to such deputy.

17. A summons may be served, or a warrant executed, within five hundred yards of the boundary of the district of the county court from which the same issued by the bailiff of such court, or, by order of the judge of such court, by such bailiff within the district of any other court. *See pp. 119, 120, 226; 9 & 10 Vict. c. 95, ss. 59, 94.*

Summons may be served or process executed within 500 yards of district, &c.

18. Where a plaintiff shall dwell or carry on business in the district of the Bloomsbury county court of Middlesex, or in the district of the Brompton county court of Middlesex, or in the district of the Clerkenwell county court of Middlesex, or in the district of the Lambeth county court of Surrey, or in the district of the Marylebone county court of Middlesex, or in the district of the Shoreditch county court of Middlesex, or in the district of the Southwark county court of Surrey, or in the district of the Westminster county court of Middlesex, or in the district of the Whitechapel county court of Middlesex, and the defendant shall dwell or carry on business in the district of any of the said courts, the summons may issue and be served either in the district in which the plaintiff shall dwell or carry on business, or in the district in which the defendant shall dwell or carry on business. *See 9 & 10 Vict. c. 95, s. 59; 30 & 31 Vict. c. 142, ss. 1, 3; and pp. 50, 56, 120.*

Districts of the courts in the Metropolis to be treated as one district for certain purposes.



Where judge of county court can sue and be sued.

19. A judge proposing to sue any person dwelling or carrying on business in any district of which he is the judge may bring his action in the county court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his action in any county court of a district adjoining the district of which the defendant is judge. *See p. 56.*

If officer of court be plaintiff in his own court, defendant may remove the cause to an adjoining district.

20. If an action be brought by an officer of a county court in the court of which he is an officer, except in case of the registrar suing as official assignee, the judge shall, at the request of the defendant, order that the venue be changed, and that the cause be sent for hearing to the court of some convenient district of which he is not the judge; and the registrar of the first-mentioned court shall forthwith transmit by post to the registrar of such last-mentioned court a certified copy of the plaint as entered in the plaint-book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue as entered in the minute-book; and the judge of such last-mentioned court shall appoint a day for the hearing, notice whereof shall be sent by post or otherwise by the registrar of such last-mentioned court to both parties. *See pp. 56, 172.*

Where officer of county court may be sued.

21. If an action be brought against an officer of a county court, the summons may issue in the district of which he is an officer, or in any adjoining district, the judge of which is not the judge of a court of which the defendant is an officer. *See 9 & 10 Vict. c. 95, s. 138; 13 & 14 Vict. c. 61, s. 19; and pp. 55, 172, 261.*

Power to judge to change venue.

22. If a judge of a county court shall be satisfied by either party to a cause pending in his court that such cause can be more conveniently or fairly tried in some other county court, he shall order that the venue be changed, and that the cause be sent for hearing to such other county court, or, if the judge shall be interested in the matter of any cause pending in his court, he shall order that the venue be changed, and that the cause be sent for hearing to some convenient county court, of which he is not the judge, at his discretion; and in either case the registrar of the court in which the plaint was entered shall forthwith transmit by post to the registrar of the court to which the cause is to be sent a certified copy of the plaint, as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue; and the judge of such last-mentioned court shall appoint a day for the hearing, notice whereof shall be sent by post or otherwise by the registrar to both parties. *See p. 172.*

If parties agree, county court shall have power to try certain causes, although the matters be beyond its jurisdiction.

23. *The county courts shall not have jurisdiction to try any action for criminal conversation; but with respect to all other actions, which may be brought in any superior court of common law, if both parties shall agree by a memorandum signed by them or their respective attorneys that any county court named in such memorandum shall have power to try such action, such county court shall have jurisdiction to try the same. See pp. 17, 18, 118, 170, 182, 192, 260, 280. Words in italics repealed by 38 & 39 Vict. c. 66.*



24. Where in any action the debt or demand claimed consists of a balance not exceeding 50*l.*, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action. *See p. 14; 9 & 10 Vict. c. 95, s. 58; 13 & 14 Vict. c. 61, s. 1.*

Where claim reduced by set-off to 50*l.*, court to have jurisdiction.

25. In any action in the county court in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, shall incidentally come in question, the judge shall have power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing shall consent in any writing signed by them or their attorneys to the judge having such power; but the judgment of the court shall not be evidence of title between the parties or their privies in any other action in that court or in any proceeding in any other court; and such consent shall not prejudice or affect any right of appeal of either of the parties to such first-mentioned action. *See pp. 18, 171, 182, 280, 285.*

Where title shall come in question, court, with consent of parties at trial, may decide the claim.

26. Where in any action of contract brought in a superior court the claim indorsed on the writ does not exceed 50*l.*, or where such claim, though it originally exceeded 50*l.*, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding 50*l.*, a judge of a superior court, on the application of either party, after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name; and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and after such hearing the registrar shall certify the result to the master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court. *See 30 & 31 Vict. c. 142, ss. 7, 32; 38 & 39 Vict. c. 50, s. 12; and pp. 62, 252, 253.*

In certain cases judge of superior court may order cause to be tried in county court.

27. No action shall be brought in a county court on any judgment of a superior court. *See p. 12.*

No action in county court on judgment of superior court.

28, 29. *Repealed by 38 & 39 Vict. c. 50, s. 12. Substituted provisions, 38 & 39 Vict. c. 50, s. 1.*

30. *Repealed by 30 & 31 Vict. c. 142, s. 33. See 30 & 31 Vict. c. 142, s. 5.*

31. A judge of a county court, in any case where he shall see fit, upon application on affidavit by either party, may issue an order under his hand and the seal of the court, for bringing up before such court any prisoner or person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise, except under process in any civil action, suit, or proceeding, to be examined as a witness in any cause or matter depending or to be inquired of or determined in or before such court; and the person required by any such warrant or order to be brought before such court shall be so

Judge may issue warrant for bringing up a prisoner to give evidence.

brought under the same care and custody, and be dealt with in like manner, in all respects, as a prisoner required by any writ of *habeas corpus* awarded by any of Her Majesty's superior courts of law at Westminster, to be brought before such court to be examined as a witness in any cause or matter depending before such court is now by law required to be dealt with: provided always, that the person having the custody of such prisoner or person shall not be bound to obey such order, unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the prisoner or persons in going to, remaining at, and returning from such county court. *See p. 157; 9 § 10 Vict. c. 95, s. 85.*

Rules, &c.,  
for regu-  
lating  
practice of  
county  
courts, and  
forms of pro-  
ceedings, to  
be framed  
by judges  
appointed  
by lord  
chancellor.

32. The lord chancellor may appoint five county court judges, and from time to time fill up any vacancies in their number, to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, and from time to time to amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or any three or more of them, shall be submitted to the lord chancellor, who may allow or disallow or alter the same; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall, from a day to be named by the lord chancellor, be in force in every county court. *See pp. 190, 343; 9 § 10 Vict. c. 95, s. 78, 19 § 20 Vict. c. 108, s. 5, 30 § 31 Vict. c. 142, s. 15; as to equity, 28 § 29 Vict. c. 99, s. 16, and 30 § 31 Vict. c. 142, s. 27.*

Scale of  
costs to be  
allowed to  
attorneys in  
certain pro-  
ceedings in  
county  
courts to be  
framed by  
the judges.

33. With respect to proceedings in the county courts, in actions where the debt or damage claimed exceeds 20*l.*, the five county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the lord chancellor, who may allow, or disallow, or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the lord chancellor, be in force in every county court. *See pp. 190, 193, 194, 344. Substituted for 15 § 16 Vict. c. 54, s. 1. As to equity, see 28 § 29 Vict. c. 99, s. 17.*

Costs of  
attorney in  
certain pro-  
ceedings in  
county  
courts shall  
be taxed by  
registrars as  
between  
party and  
party.

34. With respect to such proceedings as are specified in the last preceding section, all costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force. *See p. 194.*

Costs of  
attorney in  
certain pro-  
ceedings in  
county  
courts may

35. With respect to such proceedings as are last hereinbefore specified, all costs and charges between attorney and client shall, on the application either of the attorney or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation

may be reviewed by the judge of the court, on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force, unless the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no attorney shall have a right to recover from his client any costs or charges in respect of such proceedings, unless they shall have been allowed, either on such taxation, or on the taxation of a master of a superior court of common law or of the Court of Chancery. *See p. 193.*

be taxed by registrar as between attorney and client.

36. Where in any action the debt or damage claimed shall not exceed 20*l.*, an attorney shall not be entitled to recover from his client any further costs or charges in the conduct of such suit than those mentioned in the 91st section of the Act of the ninth and tenth years of the reign of Her present Majesty, chapter 95, unless upon taxation of costs the registrar be satisfied, by writing under the hand of the client, that he has agreed to pay further costs or charges; and in such case the registrar may allow any costs or charges not exceeding the amount which may have been so agreed to be paid. *See p. 193.*

Costs between attorney and client.

37. *Repealed by 38 & 39 Vict. c. 66.*

38. Any action commenced in a county court for a claim not exceeding 5*l.* may be removed by writ of *certiorari* into a superior court, if such superior court or a judge of a superior court shall deem it desirable that the cause shall be tried in such superior court; and if the party applying for such writ shall give security, to be approved of by one of the masters of such superior court, for the amount of the claim, and the costs of the trial, not exceeding in all 100*l.*, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose. *See p. 133.*

Scale of costs, &c. *Certiorari* may be granted in certain cases, at discretion of judge of superior court, on security given.

39. If in any action of contract the plaintiff shall claim a sum exceeding 20*l.*, or if in any action of tort the plaintiff shall claim a sum exceeding 5*l.*, and the defendant shall give notice that he objects to the action being tried in the county court, and shall give security, to be approved of by the registrar, for the amount claimed, and the costs of trial in one of the superior courts of common law, not exceeding in the whole the sum of 150*l.*, all proceedings in the county court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the county court, or shall fail to give the security aforesaid, the county court shall dispose of the cause in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the suit to prevent the operation of any Statute of Limitation applicable to such claim: provided that nothing herein contained shall prevent the removal of any cause from a county court by writ of *certiorari* in the cases and subject to the conditions in and subject to which such cause may now be removed. *See pp. 61, 138.*

In certain cases defendant may object to cause being tried in the county court.

40. The granting by any of the superior courts or by any judge thereof of a rule or summons to show cause why a writ of *certiorari* or prohibition should not issue to a county court,

Rule or summons to show cause

why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.

shall, if the superior court or a judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons, or until such superior court or judge shall otherwise order; and the judge of the county court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs. See 13 & 14 Vict. c. 61, s. 22, and pp. 81, 135.

Notice of writ of *certiorari* or prohibition having been obtained to be sent to registrar.

41. Where a writ of *certiorari* or of prohibition addressed to a judge of a county court shall have been granted by a superior court or a judge thereof, on an *ex parte* application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day for hearing the cause to which it shall relate, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs. See pp. 81, 135.

Application for writ of prohibition to a judge shall be finally disposed of by rule or order.

42. When an application shall be made to a superior court or a judge thereof for a writ of prohibition to be addressed to a judge of a county court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed. See p. 82.

Rule or order substituted for writ of mandamus to a judge or officer of a county court.

43. No writ of mandamus shall henceforth issue to a judge or an officer of the county court for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to any superior court [*or a judge thereof*], upon an affidavit of the facts for a rule or summons calling upon such judge or officer of a county court, and also the party to be affected by such act, to show cause why such act should not be done; and if, after the service of such rule or summons, good cause shall not be shown, the superior court [*or judge thereof*] may by rule or order direct the act to be done, and the judge or officer of the county court, upon being served with such rule or order, shall obey the same on pain of attachment; and in any event the superior court [*or the judge thereof*] may make such order with respect to costs as to such court or judge shall seem fit. Words in brackets repealed by 21 & 22 Vict. c. 74, s. 4. See pp. 87, 88.

Refusal of writ of *certiorari* or prohibition, or of rule or order in the nature of a mandamus,

14. When any superior court or a judge thereof shall have refused to grant a writ of *certiorari* or of prohibition to be addressed to a judge, or such rule or order as in the last preceding section is specified, no other superior court or judge thereof shall grant such writ or rule or order; but nothing herein shall affect the right of appealing from the decision of

the judge of the superior court to the court itself, or prevent a second application being made for such writ or rule or order to the same superior court or a judge thereof on grounds different from those on which the first application was founded. *See pp. 82, 89, 136.*

45. When judgment has been obtained in a county court for a sum not exceeding 20*l.*, exclusive of costs, the judge may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as he shall think fit, and all such monies shall be paid into court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith, or within fourteen clear days from the date of the judgment, unless the plaintiff, or his counsel, attorney, or agent, will consent that the same shall be paid by instalments, in which case the judge shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to, and all such monies, whether payable in one sum or by instalments, shall be paid into court. *See pp. 185, 186, 187, 188; 9 & 10 Vict. c. 95, s. 74.*

by one court or judge to be final.

Where judgment does not exceed 20*l.*, judge may order payment by instalments, in other cases consent of plaintiffs necessary.

46. The precise time when any application shall be made to a registrar to issue a warrant against the goods of a party shall be entered by him in the execution-book and on the warrant; and when more than one such warrant shall be delivered to the high bailiff to be executed he shall execute them in the order of the times so entered. *See pp. 223, 225.*

Priority of executions issuing out of county court.

47. When a writ against the goods of a party has issued from a superior court, and a warrant against the goods of the same party has issued from a county court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed; and the sheriff, on demand, shall, by writing signed by any clerk in the office of the under sheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed, and the endorsement on the warrant, shall respectively be sufficient justification to any high bailiff or sheriff acting thereon. *See p. 225.*

Priority of executions issuing out of superior court and county court.

48. A judgment summons authorised by the 98th section of the Act of the ninth and tenth years of the reign of Her present Majesty, chapter 95, may, by leave of the judge, be obtained from the court in which judgment was obtained, although the judgment-debtor shall not then dwell or carry on business within the district of such court, if the judge shall think fit, in the exercise of his discretion, to grant such leave. *See note to 9 & 10 Vict. c. 95, s. 98, and pp. 56, 242.*

Summons for commitment may, by leave of court, issue in court in which judgment was obtained.

49. If a judge of a superior court shall be satisfied that a party against whom judgment for an amount exceeding 20*l.*, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of *certiorari* to issue to remove the judgment of the county court into one of the

Judgment may be removed if there are no goods to be taken under it.

superior courts, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of such superior court : but no action shall be brought upon such judgment. *See p. 231.*

Possession of small tenements may be recovered in county courts by landlords where term has expired or been determined by landlord or tenant.

50. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded 50*l.*, by the year, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the landlord or the tenant, by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant or against such person so neglecting or refusing, in the county court of the district in which the premises lie for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing ; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the judge shall think fit to name ; and if such order be not obeyed, the registrar, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the high bailiff of the court to give possession of such premises to the plaintiff. *See pp. 286, 288, 291. Substituted for 9 & 10 Vict. c. 95, s. 122.*

In plaint for recovery of possession, plaintiff may claim for rent and mesne profits.

51. In any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed 50*l.*, and any misdescription in the nature of such claim may be amended at the trial. *See p. 288.*

Possession of small tenements may be recovered in county court by landlords for non-payment of rent.

52. When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds 50*l.* by the year, shall for one half year be in arrear, and the landlord shall have right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the county court of the district in which the premises lie for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry ; and if the tenant shall five clear days before the return-day of such summons pay into court all the rent in arrear, and the costs, the said action shall cease, but if he shall not make such payment, and shall not at the time named in



the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises, and of the fact that one half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into court; and if such order be not obeyed, and such rent and costs be not so paid, the registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorising and requiring the high bailiff of the court to give possession of such premises to the plaintiff, and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant, and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief in equity or otherwise. *See pp. 290, 291.*

53. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the court from which summons shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question. *See p. 291.*

Sub-tenant served with summons to recover possession must give notice to his immediate landlord, who may come in and defend.

54. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in county courts; and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant. *See p. 291.*

In plaints to recover possession of premises, how summonses may be served.

55. Any warrant to a high bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon. *See p. 292.*

Warrants to high bailiffs sufficient to justify them in entering on premises.

56. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by

Such warrants to be



in force for three months from the day named for delivering possession.

As to amendment of defects and errors of proceedings, &c.

Before whom affidavits may be sworn.

No officer or party shall be deemed a trespasser by reason of irregularity.

Bankruptcy and insolvency of plaintiff not to cause action to abate, if assignees elect to continue it.

Registrar to grant replevins.

the judge in his order for the delivery of possession of the premises in question, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served. *See p. 291.*

57. The judge of a county court may at all times amend all defects and errors in any proceeding in such court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without costs, and upon such terms as to the judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for. *See pp. 93, 174.*

58. Any affidavit to be used in a county court may be sworn before a judge or registrar of a county court, without the payment of any fee, or before a commissioner to administer oaths in Chancery in England, or a London commissioner to administer oaths in Chancery, or a commissioner for taking affidavits in any superior court, such commissioners respectively not being registrars, or before a justice of the peace. *Substituted for 13 & 14 Vict. c. 61, s. 23. See p. 158.*

59, 61. *Repealed by 38 & 39 Vict. c. 66.*

60. No officer of a county court in executing any warrant of a county court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs, unless the damages awarded shall exceed forty shillings. *See p. 350.*

61. *See 9 & 10 Vict. c. 95, s. 137.*

62. The bankruptcy or insolvency of the plaintiff in any action in a county court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees shall elect to continue such action, and to give security for the costs thereof, within such reasonable time as the judge shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees do not elect to continue the action, and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action. *See p. 108.*

63. The powers and responsibilities of the sheriff with respect to replevin bonds and replevins, shall henceforth cease: and the registrar of the county court of the district in which any distress subject to replevin shall be taken shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds and to grant replevins, and to issue

all necessary process in relation thereto, and such process shall be executed by the high bailiff. *See p. 270.*

64. Such registrar shall, at the instance of the party whose goods shall have been distrained, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections. *See p. 270.*

Replevins to be granted, on securities given.

65. An action of replevin may be commenced in any superior court in the form applicable to personal actions therein, and such court shall have power to hear and determine the same; and if the replevisor shall wish to commence proceedings in any superior court, he shall, at the time of replevying, give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in a superior court, conditioned to commence an action of replevin against the distrainer in such superior court as shall be named in the security, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before such superior court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise was in question, or that such rent or damage exceeded 20*l.*, and to make return of the goods, if a return thereof shall be adjudged. *See p. 271.*

Replevins may be commenced in superior courts. Conditions of security to be given in such cases.

66. If the replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in the county court, conditioned to commence an action of replevin against the distrainer in the county court of the district in which the distress shall have been taken, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof shall be adjudged. *See p. 271.*

Conditions of security to be given when replevin brought in county court.

67. Any action of replevin brought in a county court shall be removed into any superior court by writ of *certiorari*, if the defendant shall apply to such superior court or to a judge there for such writ, and shall give security, to be approved of by the master of such superior court, for such amount, not exceeding 150*l.*, as such master shall think fit, conditioned to defend such action with effect, and, unless the replevisor shall discontinue or shall not prosecute such action or become nonsuit therein, to prove before such superior court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise was in question, or that the rent or damage in respect of which the distress shall have been taken exceeded 20*l.*; and every such superior court shall have power to determine the same action. *See p. 273.*

Replevins shall, at instance of defendant, be removed into superior court by *certiorari*, in certain cases.

Appeal in actions of replevin, and proceedings in interpleader and for recovery of tenements.

68. An appeal from the decision of a county court, on the same grounds and subject to the same conditions as are provided by the 14th section of the Act of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter 61, shall be allowed in all actions of replevin where the amount of rent or damage exceeds 20*l.*, and in all actions for the recovery of tenements where the yearly rent or value of the premises exceeds 20*l.*, and in proceedings in interpleader where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds 20*l.*, and in all actions where the parties agree that the court shall have jurisdiction. *See pp.* 199, 200, 201, 235, 274, 292.

Parties may agree not to appeal.

69. No appeal shall lie from the decision of a county court, if before such decision is pronounced both parties shall agree, in writing signed by themselves or their attorneys or agents, that the decision of the judge shall be final, and no such agreement shall require a stamp. *See pp.* 198, 201.

How securities under County Courts' Acts to be given and enforced.

70. Where by this Act, or any Act relating to the county courts, a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or proceeding: provided always, that the court in which any action on the bond shall be brought may by rule or order give such relief to the obligors as may be just, and such rule or order shall have the effect of a defence of such bond. *See pp.* 216, 270.

Where security is required to be given, a deposit of money may be made in lieu thereof.

71. Where by this Act or any Acts relating to the county courts a party is required to give security, he may in lieu thereof deposit with the registrar, if the security is required to be given in a county court, or with a master of the superior court if the security is required to be given in such court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such registrar or master, and to be signed by such party, his attorney or agent, setting forth the conditions on which such money is deposited, and the registrar or master shall give to the party paying a written acknowledgment of such payment; and the judge of the county court when the money shall have been deposited in such court, or a judge of the superior court when the money shall have been deposited in a superior court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as to him shall seem just. *See pp.* 133, 217, 270.

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.

72. Where any claim shall be made under section 118 of the Act of the ninth and tenth years of the reign of Her present Majesty, chapter 95, to or in respect of any goods taken in execution under the process of a county court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisement in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed

to charge as costs for keeping possession of such goods until such decision can be obtained, and in default of the claimant so doing the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the judge. *See p. 234 ; 30 & 31 Vict. c. 142, s. 31, substituted for 9 & 10 Vict. c. 95, s. 118.*

73. Any acknowledgment to be made by any married woman of any deed under the Act of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter 74, may be received by a judge of a county court in the same manner as such acknowledgment may be received by a judge of a superior court. *See p. 320.*

Acknowledgments by married women under 3 & 4 Wm. 4, c. 74, to be received by judge.

74. When any prison wherein any person committed by a county court may be confined is situated at an inconvenient distance from such court, one of Her Majesty's principal secretaries of state may, by order under his hand, direct that persons committed by such court shall be confined in any other prison named in such order to which persons may be committed from any other county court, though such prison may be in a different county, district, city, borough, or place from that in which such first-mentioned court shall be held, and may from time to time vary such order: provided that no such order shall be made without the consent of the visiting justices of the prison in which such persons are to be directed by any such order to be confined; and every person so confined shall be supported at the expense of the county, district, city, borough, or place in which he shall have resided at the time of his committal. *See 9 & 10 Vict. c. 95, ss. 49, 113, 12 & 13 Vict. c. 101, ss. 1, 2, 3, 5, and pp. 244, 353.*

When debtors' prison of county is distant from a court, the nearest debtors' prison of adjoining court may, by order of a secretary of state, be used.

75. Section 1 of the Act of the eighth year of the reign of Queen Anne, chapter 14, shall not apply to goods taken in execution under the warrant of a county court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly, the amount for which the warrant issued; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs

When goods seized under process of county court, landlord may claim certain rent in arrear.

of and incident to the sale under the execution, and the amount for which the warrant issued ; and in either event the overplus of the sale, if any, and the residue of the goods, shall be returned to the defendant ; and the poundage of the high bailiff and broker for keeping possession, appraisement, and sale under such distress shall be the same as would have been payable if the distress had been an execution of the county court, and no other fees shall be demanded or taken in respect thereof. *See p. 230. This section is substituted for 9 & 10 Vict. c. 95, s. 107, and 13 & 14 Vict. c. 61, ss. 20, 21.*

Removal of bonds from registry of Common Pleas.

76. If any bond given under the provisions of any Act relating to the county courts shall have been registered in the Court of Common Pleas in England, and the condition of such bond shall have been satisfied, the Commissioners of Her Majesty's Treasury, by certificate under the hands of any two of them, may authorise the proper officer of the said court to enter up satisfaction on the record of such bond or obligation. *See p. 217 ; 19 & 20 Vict. c. 108, s. 70.*

77. *Repealed by 38 & 39 Vict. c. 66.*

Fees specified in schedule to be taken, and table of fees to be exhibited in court and registrar's office.

78. The fees payable on the proceedings in the county courts mentioned in schedule C to this Act shall be those therein specified ; and such fees shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising or selling goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken, before such proceeding is taken ; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced by such means as might be employed to recover any debt adjudged by the court to be paid ; and a table of all fees shall be posted in some conspicuous place in every courthouse and in every registrar's office. *Substituted for 9 & 10 Vict. c. 95, s. 37, and 13 & 14 Vict. c. 61, s. 5. See pp. 114, 179, 190, 344.*

Treasury to regulate fees to be taken in county courts.

79. The Commissioners of Her Majesty's Treasury, from time to time, with the consent of the lord chancellor, may lessen or increase the fees which are specified in schedule C to this Act, or which are now payable on proceedings in the county courts taken under any Act not hereinbefore recited, and may substitute other fees in lieu thereof, and may order new fees to be paid on any proceedings which are now or shall hereafter be authorised to be taken in such courts, whether any fee is now payable thereon or not : provided always, that every such alteration in the scale of fees shall be notified to both Houses of Parliament within ten days from the commencement of the session next after such alteration. *See p. 344. Substituted for 12 & 13 Vict. c. 101, s. 6. As to equity, see 28 & 29 Vict. c. 99, ss. 12, 13.*

Salaries of judges to be paid out of Consolidated Fund ; travelling expenses out of monies voted.

80. The salaries of the judges of the county courts shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury are hereby empowered to pay the same accordingly ; and the sums which are now or may hereafter be allowed to them for travelling expenses shall be paid out of monies that may be voted by Parliament for that purpose. *See p. 330.*

81. Whereas by the 14th section of the said Act passed in the session of Parliament holden in the fifteenth and sixteenth years of the reign of Her present Majesty, chapter 54, it was enacted, that after the passing of the said Act the greatest salaries to be received in any case by the judges of the county courts should be 1,500*l.*, but that in no case should any judge be paid a less salary than 1,200*l.*: and whereas the Commissioners of Her Majesty's Treasury have ordered that the salaries of the judges whose names are mentioned in the schedule marked D annexed to this Act should be fixed at the amounts set opposite their respective names in such schedule: and whereas it is desirable that the salaries of the judges of the county courts should be fixed by Parliament at one uniform rate: be it enacted, that every judge of a county court shall be paid a salary of 1,200*l.* a year, and no more: provided always, that the judges mentioned in the said schedule shall continue to receive the salaries therein mentioned to be payable to them respectively so long as they shall continue to be judges of the county courts: and provided also, that nothing herein contained shall affect the right or title of any county court judge to receive any sum or sums of money now or hereafter to be made payable to him for defraying his travelling expenses. *See p. 329, 9 & 10 Vict. c. 95, s. 40, and 28 & 29 Vict. c. 99, s. 13.*

82. The registrars of the courts shall be paid by salaries; and the principle on which the said salaries shall be so regulated shall be, that the registrar of each court in which the plaintiffs entered do not exceed the number of two hundred in a year shall have an annual salary of 120*l.*; and that in courts where the plaintiffs exceed two hundred in the year the salaries shall be increased by sums of 5*l.* for every twenty-five additional plaintiffs up to one thousand plaintiffs inclusive, and then by sums of 4*l.* for every twenty-five additional plaintiffs up to six thousand inclusive; and such salaries shall be inclusive of all salaries to the clerks employed by the registrar in the business of their respective courts, and of all emoluments whatsoever, except those receivable by them in proceedings in insolvency or protection; and in the courts in which the plaintiffs exceed the number of six thousand the amount of salary shall be fixed by the said commissioners with the consent of the lord chancellor, but in no case shall the net salary to be allowed exceed the maximum salary of 700*l.* a year as provided by the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter 54: provided always, that the salary of any registrar acting in a similar capacity, or as clerk, before the passing of the Act of the 9 & 10 Vict. c. 95, in any court mentioned in schedule A to that Act, shall not (exclusive of all salaries to the clerks to be employed by them as aforesaid, the amount of such salaries and the number of such clerks to be sanctioned and approved by the Commissioners of Her Majesty's Treasury) be limited to any sum less than the average amount of the fees and emoluments of his office during the seven years next before the passing of the said last-mentioned Act, such amount to be ascertained by the Commissioners of Her Majesty's Treasury, or to a sum less than the amount which he now receives in pursuance of

Salaries of  
the judges.

Registrars  
to be paid  
by salaries,  
as herein  
mentioned.



any arrangement since the abolition of the court of which he was the clerk or registrar. *See p. 336; 9 & 10 Vict. c. 95, s. 40; 28 & 29 Vict. c. 99, s. 12; 30 & 31 Vict. c. 142, s. 30. Repealed as to future registrars, 29 Vict. c. 14, s. 14.*

High bailiffs to be paid partly by salaries and partly by fees.

83. The high bailiffs of the courts shall be paid by salaries to be fixed and regulated from time to time by the Commissioners of Her Majesty's Treasury, with the consent of the lord chancellor, and shall, in addition to such salaries, receive for their own use the fees appointed for keeping possession of goods under executions, and such salaries shall include all payments made by the high bailiffs to their under bailiffs, or, with the like consent, the high bailiffs may be paid partly by salaries and partly by allowances for the execution of warrants, and for mileage on the service or execution of any process. *See p. 340; 9 & 10 Vict. c. 95, s. 39.*

Salaries of registrars and high bailiffs to be paid out of fees.

84. The salaries of the registrars and high bailiffs shall be paid out of the produce of the fees payable under the provisions of this Act; and whenever the amount of such fees shall not be sufficient to pay such salaries, the deficiency shall be made good out of any monies to be provided by Parliament for that purpose; and the surplus which from time to time shall remain after payment of the said salaries shall be paid over to the credit of the said consolidated fund. *See p. 336.*

Expense of building, &c. to be paid out of monies to be provided by Parliament.

85. The expense of building, purchasing, or providing any messuages and lands for the purposes of the county courts, and of repairing, furnishing, cleaning, lighting, and warming the court-houses and offices, and of payment of the salaries of the necessary servants for taking charge of such court-houses and offices, and of supplying the courts and offices with law and office books and stationery, and of postage stamps, and the disbursements of the high bailiffs in conveying to prison persons committed by the county courts, and all other expenses incident to the holding of the said courts, shall be paid by the Commissioners of Her Majesty's Treasury out of any monies to be from time to time provided by Parliament for such purposes. *See p. 325; note to s. 50, 9 & 10 Vict. c. 95.*

Provisions relating to superior courts to apply to common pleas at Lancaster and court of pleas at Durham.

86. All the provisions of this Act applicable to superior courts and judges thereof shall apply to the court of common pleas at Lancaster and court of pleas at Durham, and the judges thereof respectively, being judges of one of the common law courts at Westminster, and all the said provisions applicable to masters of superior courts shall apply to the respective prothonotaries of the court of common pleas at Lancaster and court of pleas at Durham, and their respective deputies, acting in execution of the duties of such officers: provided that any writs of *certiorari* to be issued by the order of such courts or of a judge thereof shall be issued out of the chanceries of the counties palatine of Lancaster and Durham respectively, and shall be made returnable into the said court of common pleas at Lancaster and court of pleas at Durham respectively, in the same manner as other writs of *certiorari* of such counties palatine respectively.

Proviso as to *certiorari*.

*The jurisdiction of the above courts is by 36 & 37 Vict. c. 66, s. 16, transferred to the High Court of Justice. The value of the present section is somewhat doubtful. See pp. 3, 132.*



## SCHEDULE A.

1. *Parts of Acts repealed.*

| Reference to Act.        | Title of Act.                                                                                                                               | Extent of Repeal.                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9 & 10 Vict.<br>c. 95.   | An Act for the more easy recovery of small debts and demands in England.                                                                    | The whole of sections 37, 52, 92, 107, 121, 122, 123, 126, 127, and 139.<br>So much of section 102 as enacts that "no protection order or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment" under the order of a judge.<br>So much of section 142 as applies to the word "agent." |
| 12 & 13 Vict.<br>c. 101. | An Act to amend the Act for the more easy recovery of small debts and demands in England, and to abolish certain inferior courts of record. | The whole of section 6.                                                                                                                                                                                                                                                                                                                                                                    |
| 13 & 14 Vict.<br>c. 61.  | An Act to extend the Act for the more easy recovery of small debts and demands in England, and to amend the same.                           | The whole of sections 5, 6, 7, 17, 20, 21, and 23.                                                                                                                                                                                                                                                                                                                                         |
| 15 & 16 Vict.<br>c. 54.  | An Act further to facilitate and arrange proceedings in the county courts.                                                                  | The whole of section 1.                                                                                                                                                                                                                                                                                                                                                                    |
| 17 & 18 Vict.<br>c. 16.  | An Act to amend the Act of the 13 & 14 Vict. c. 61, and the Act of the 15 & 16 Vict. c. 54.                                                 | The whole of section 1.                                                                                                                                                                                                                                                                                                                                                                    |

*This schedule is repealed by 38 & 39 Vict. c. 66, but it is retained so that the course of legislation may be traced.*

## SCHEDULE B.

*Repealed by 38 & 39 Vict. cc. 50, 66.*

## SCHEDULE C.

*Brokers' and Appraisers' Fees.*

For the appraisal of goods, whether by one broker or more,—sixpence in the pound on the value of the goods appraised, over and above the stamp duty.

For the sale of goods, including advertisements, catalogues, sale and commission, and delivery of goods,—one shilling in the pound on the net produce of sale.

In cases of interpleader the judge may allow, at the hearing, the actual costs incurred by the high bailiff in keeping possession of the goods claimed, and no more (a).

(a) In the above schedule, only such parts are retained as do not appear in the scales of fees now in force.

## SCHEDULE D.

|                                                                                                                                                                                                                                                                                               |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| F. Bayley, Esq., judge of the Westminster county court of Middlesex ... ..                                                                                                                                                                                                                    | £ 1,500 |
| J. Pitt Taylor, Esq., judge of the Lambeth county court of Surrey, and the county court of Kent holden at Greenwich and Woolwich ... ..                                                                                                                                                       | 1,500   |
| W. Furner, Esq., judge of the county courts of Sussex, holden at Arundel, Brighton, Chichester, Cuckfield, East Grinstead, Hastings, Horsham, Lewes, Midhurst, Petworth, Rye, and Worthing ... ..                                                                                             | 1,350   |
| T. Falconer, Esq., judge of the county courts of Brecknockshire, holden at Brecknock, Builth, Crickhowell, and Hay; of the county courts of Glamorganshire, holden at Bridgend, Cardiff, Merthyr Tydfil, Neath, and Swansea; and of the county court of Radnorshire, holden at Rhaiadr ... .. | (a)     |
| J. St. John Yates, Esq., judge of the county courts of Cheshire, holden at Congleton, Hyde, Macclesfield, and Stockport; of the county court of Derbyshire, holden at Glossop; and of the county of Lancashire, holden at Ashton-under-Lyne ... ..                                            | (a)     |

*Repealed, except as above, by 38 & 39 Vict. c. 66.*

(a) See 20 & 21 Vict. c. 36, fixing these salaries at 1,500*l*.

## THE COUNTY COURTS ACT, 1858.

[21 & 22 Vict. c. 74; August 2, 1858.]

Lord chancellor may alter and redistribute the districts of the courts

1. *The 19th section of the said Act is hereby repealed; and it shall be lawful for the lord chancellor from time to time to alter the distribution of the districts among the judges of county courts, and for that purpose to remove any judge of a county court from all or any of the districts of which he is the*

judge, for the purpose of appointing him to any other district among the or districts, or to appoint any such judge to be the judge of judges thereof. any district or districts in addition to the district or districts of which he is the judge. *See p. 323. Words in italics repealed by 38 & 39 Vict. c. 66.* 9 & 10 Vict. c. 95.

2. The lord chancellor may from time to time appoint two persons to be the judges of a district or districts, and may make such regulations as to their respective sittings or otherwise as to the division of their duties as he may think right, and each of the persons when acting as such judge shall have all such powers and authorities as if he had been sole judge of such district. *See p. 326.* Two persons may be appointed the judges of one or more districts.

3. Until Parliament shall otherwise direct, the judges of the county courts shall not exceed sixty in number. *See p. 326; 9 & 10 Vict. c. 95, ss. 2, 9.* Number of judges not to exceed sixty.

4. Whereas it is desirable that the powers given by section 43 of the Act passed in the session of Parliament holden in the nineteenth and twentieth years of the reign of Her present Majesty, chapter 108, to any superior court, or a judge thereof, should be exercised only by such superior court and not by a single judge: be it enacted, that no rule or summons requiring a judge or an officer of a county court to show cause why any Act relating to the duties of his office should not be done, nor any rule or order directing such Act to be done, shall be issued or made except by the superior court, and the said section 43, and any provisions of the said Act having reference thereto, shall be read and construed as if the words "or a judge thereof" were not inserted in the said section. *See p. 88.* Rule or order requiring a judge or officer of a county court to perform certain duties to be issued only by a superior court.

5. 17 & 18 Vict. c. 125, s. 3, as to referring causes to county courts, repealed. Repealed by 38 & 39 Vict. c. 66. *See p. 170.*

## THE COUNTY COURTS ACT, 1859.

[22 VICT. c. 8; March 25, 1859.]

1. The 32nd section of the said Act is hereby repealed; and on the passing of this Act any person who may be deemed to be the high bailiff of either of the said courts, under the provisions of the said section, shall cease to be deemed and to be the high bailiff of the said court; and high bailiffs for the Westminster county court of Middlesex and the Southwark county court of Surrey respectively, and for any other courts holden under the said Act of which the high bailiffs of Westminster and Southwark respectively would have been deemed high bailiffs under the said section, shall be from time to time appointed, and shall be liable to be removed, in the same manner as now by law provided concerning the appointment and removal of the high bailiffs of other courts holden under the said recited Act. *See p. 336.* Sect. 32 of 9 & 10 Vict. c. 95, repealed, and other provisions made as to appointments of high bailiffs of Westminster and Southwark.

22 & 23 Vict. c. 57. *An Act limiting the power of imprisonment for small debts, exercised by the county courts judges. Repealed by 32 & 33 Vict. c. 83, s. 20.*

## THE COUNTY COURTS ACT, 1865.

[28 & 29 Vict. c. 99; July 5, 1865.]

Jurisdiction in equity to be exercised in county courts in certain suits and matters.

1. The county courts held by virtue of an Act passed in the session of Parliament holden in the ninth and tenth years of the reign of Her Majesty, chapter 95, shall have and exercise all the power and authority of the High Court of Chancery in the suits or matters hereinafter mentioned; that is to say,

1. In all suits by creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of 500*l.* *See p. 294.*
2. In all suits for the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of 500*l.* *See p. 295.*
3. In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of 500*l.* *See p. 295.*
4. *In all suits for specific performance, or for the delivering up or cancelling any agreement for the sale or purchase of any property, where the purchase-money shall not exceed the sum of 500*l.* Repealed by 30 & 31 Vict. c. 142, s. 33. Substituted provisions, 30 & 31 Vict. c. 142, s. 9.*
5. In all proceedings under the Trustees' Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value the sum of 500*l.* *See p. 295; 30 & 31 Vict. c. 142, ss. 24—26.*
6. In all proceedings relating to the maintenance or advancement of infants in which the property of the infant shall not exceed in amount or value the sum of 500*l.* *See p. 296.*
7. In all suits for the dissolution or winding-up of any partnership in which the whole property, stock, and credits of such partnership shall not exceed in amount or value the sum of 500*l.* *See p. 296.*
8. In all proceedings for orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the county court, or for stay of proceedings at law to recover any debt provable under a decree for the administration of an estate made by the court to which the application for the order to stay proceedings is made. *See p. 297.*

2. In all such suits or matters the judge of a county court shall, in addition to the powers and authorities now possessed by him, have all the powers and authorities, for the purposes of this Act, of a judge of the High Court of Chancery; and the treasurer, registrar, and high bailiff shall, in all matters in which the county court has jurisdiction under this Act, discharge any duties which an officer of the Court of Chancery can discharge, either under the order of a judge of such court or the practice thereof, and all officers of the county courts shall in discharging such duties conform to any rules or orders to be framed as hereinafter provided. *See pp. 195, 293.*

3. Any one of the vice-chancellors, on the application at chambers of any party to any suit or matter pending under this Act, shall have power, then and there, or, if he shall think fit, after hearing a summons served upon the other party or parties, to transfer the same to the Court of Chancery, upon such terms, if any, as to security for costs or otherwise, as he may think fit. *See pp. 137, 298.*

4. The judge and officers of the court held under the provisions of the London (City) Small Debts Extension Act, 1852, hereinafter called the "city court," shall respectively have and exercise the like jurisdiction, powers and authorities in all respects, except the power of appointing officers, as are for the time being possessed and exercised by the judge and officers respectively of a metropolitan county court; and the chief clerk and the chief bailiff of the city court shall henceforth be respectively styled the registrar and high bailiff thereof, the word "registrar" being interpreted to include the assistant clerks, and the words "high bailiff" the bailiffs of the city court; and the fees which may be from time to time taken in a county court in any proceeding in which jurisdiction is hereby given to the judge and officers of the city court shall be taken in the city court, and shall be paid into the general fund thereof, and the judge and officers of the city court shall, out of the said general fund, be respectively paid additional salaries of such amount as the mayor, aldermen, and commons of the city of London, in common council assembled, from time to time shall think fit to direct; and such judge and officers of the city court shall conform to the rules and orders made under the authority of this Act. *See p. 324.*

5. Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found or declared entitled by any county court in any suit or matter under this Act may be ordered by the court to be paid to the accountant-general of the Court of Chancery, in accordance with the provisions of section 32 of an Act passed in the session of Parliament held in the thirty-sixth year of the reign of His Majesty King George the Third, chapter 52; and the person ordered to pay the same shall, within such time as the court shall direct, produce to the registrar of the court the certificate of the accountant-general of the payment of such money; and if default be made in such payment the judge may direct a warrant of execution to issue to the high bailiff of the court,

In matters under this Act, judge and officers of the county courts to have the powers and authorities of a judge and officers of the Court of Chancery.

Power to a vice-chancellor to order transfer of suits from county court to Court of Chancery.

City Small Debts Court to have same jurisdiction in all matters as a metropolitan county court.

Power to judge of a county court to order any legacy, &c. to which an infant or person beyond seas may be entitled to be paid into the Bank of England, in accordance with pro-

visions of  
sect. 32 of  
36 Geo. 3,  
c. 52.

who by such warrant shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels of such person a sum of money equal in amount to the sum which he was ordered to pay to the said accountant-general and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the said accountant-general under the direction of the court; and all amounts so paid or transferred into the Court of Chancery, with any dividends thereon, shall be paid or transferred to the person or persons entitled thereto, or otherwise applied for his or their benefit, on application by summons to one of the vice-chancellors while sitting at chambers. *See p. 310.*

Act not to  
impair juris-  
diction of  
stannaries  
court.

6. Nothing in this Act contained shall be construed to impair the jurisdiction of the stannaries court, or to give authority to any county court judge to entertain jurisdiction in any case to which the equitable jurisdiction of the said court at present extends. *See p. 12; 9 & 10 Vict. c. 95, s. 141, as to common law.*

Provisions  
of County  
Courts' Acts  
as to juries,  
suits, and  
witnesses  
extended to  
suits and  
witnesses  
under this  
Act.

7. Whenever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the county courts by this Act, it shall be summoned from the list of jurors in the possession of the registrar of the county court in which the suit or matter has been brought; and all the enactments relating to the summoning, impanelling, and swearing of a jury in a county court, and to the number of the jury and the unanimity of their verdict, shall apply to every jury summoned under this Act; and the duties and obligations of and upon all jurors, suitors, and witnesses, and their liability to penalty and punishment, shall, in any proceeding under this Act, be the same as those created, authorised, and imposed by the several statutes now in force relating to county courts. *See p. 160.*

Power to  
enforce  
judgments  
of county  
courts in  
equity.

8. For the due execution of any judgment, decree, or order made under the authority of this Act, or of the rules and orders to be framed as hereinafter provided, the court shall have power to order, and the registrar upon such order shall have authority to seal and issue, and the high bailiff to execute, any writ or warrant of possession, writ or warrant of execution, or other process of execution for carrying into effect any judgment, decree, or order of the said court; and such writs, warrants, and processes shall be in the form and executed at the time and in the manner to be set forth in the rules and orders to be framed as hereinafter provided. *See p. 307.*

Where  
amount of  
subject-  
matter of  
suit exceeds  
limit of  
the juris-  
diction of  
county  
court, suit  
may be  
remitted to  
Court of  
Chancery,  
&c.

9. If during the progress of any suit or matter it shall be made to appear to the court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the county courts is hereby limited, it shall not affect the validity of any order or decree already made, but it shall be the duty of the court to direct the said suit or matter to be transferred to the Court of Chancery, and thereupon the said suit or matter shall proceed in such one of the vice-chancellors' courts as the lord chancellor may by general order direct; and such vice-chancellor shall have power to regulate the whole of the procedure in the said suit or matter when so transferred:

provided always, that it shall be lawful for any party to apply to such vice-chancellor at chambers for an order authorising and directing the suit or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the county courts; and the vice-chancellor, if he shall deem it right to summon the other parties or any of them to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order. *See pp. 293, 299, 300.*

10. With respect to the court in which proceedings in equity shall be taken—

In what courts proceedings shall be taken.

1. Proceedings under this Act which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments shall be taken in that county court within the district of which the lands, tenements, or hereditaments, or any part thereof, are situate. *See p. 295.*
2. Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the county court within the district of which the persons making the application, or any of them, reside or resides. *See p. 295.*
3. Proceedings for the administration of the assets of a deceased person shall be taken in the county court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode. *See p. 294.*
4. Proceedings in partnership cases shall be taken in the county court within the district of which the partnership business was or is carried on. *See p. 296.*
5. Proceedings for the specific performance or the delivery up or cancelling of agreements shall be taken in the county court within the district of which the defendants, or any one of them, reside or resides, or carry on or carries on business. *See p. 295.*
6. Proceedings in any suit or other matter under this Act, which are not otherwise provided for, shall be taken or instituted in the county court within the district of which the defendants, or any or either of them, shall reside or carry on business. *See pp. 295, 296.*
11. If during the progress of a suit or matter it shall be made to appear to the court that the same could be more conveniently prosecuted in some other county court, it shall be competent for the court to transfer the same to such other county court, and thereupon the suit or matter shall proceed in such other county court. *See pp. 172, 298.*

As to transfer of suit from one county court to another.

12. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under the jurisdiction in equity given to the courts by this Act, by receiving for their own use such fees as may be from time to time authorised to be taken by any orders to be made by the

Remuneration of registrars and high bailiffs in matters of equity.



Commissioners of the Treasury, with the consent of the lord chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders. *See pp. 334, 335, 340, 344.*

Certain fees to be taken, and to be paid over to the Consolidated Fund, and the salaries of the judges to be increased by 300*l.* a year.

13. In addition to the fees to be authorised to be taken by order of the Commissioners of Her Majesty's Treasury as aforesaid, there shall be paid by the suitors the several fees which are specified and set forth in the schedule to this Act, or such further or other fees as the said commissioners, with the consent of the lord chancellor, shall from time to time by order direct, which fees shall be received by the registrar of the court, and accounted for and paid over by him to the treasurer of the court, who shall, at such times as the said commissioners shall direct, pay such fees into the Bank of England to the credit of the paymaster-general, to be by him paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the salaries paid out of such fund to the judges of the county courts shall be increased by 300*l.* a year: provided always, that the salary of the successor to any judge who under this Act shall receive a larger salary in the whole than 1,500*l.* shall not exceed 1,500*l.*: *provided also, that if any judge heretofore appointed shall resign his office by reason of any permanent infirmity before he shall have received or become entitled to receive the increased amount of salary payable to him under this Act for the full period of five years, any annuity which the lord chancellor may recommend to be paid to him upon such retirement shall be calculated with reference to the average amount of salary received or receivable by him for the five years next preceding the date of such retirement, and not with reference to the yearly salary which he shall be entitled to as a judge of county court at the time of presenting his petition for the grant of an annuity. See pp. 329, 333, 334, 344; as to judge's salary, 9 & 10 Vict. c. 95, s. 40; 19 & 20 Vict. c. 108, ss. 80, 81; as to the last proviso, 15 & 16 Vict. c. 54, s. 15. The proviso is repealed by 38 & 39 Vict. c. 66.*

Judge not obliged to hold courts in the month of September.

14. No judge of any county court shall be obliged to hold any courts during the month of September in any year, unless he shall be ordered by the lord chancellor so to do; and if any judge shall be desirous of holding courts in the said month of September, and of being relieved from the obligation to do so at some other period of the year, it shall be lawful for such judge, with the sanction of the lord chancellor, to close the courts upon his circuit for any period or periods of time of which the lord chancellor shall approve, not exceeding in the whole four weeks in any one year: provided always, that every county court shall always be open for the receipt and payment out of money due under any order of the court, pursuant to the rules and orders in force for the time being, or for any proceeding in bankruptcy before the registrar. *See p. 329; 9 & 10 Vict. c. 95, s. 56.*

As to registry of judgments in London.

15. Such of the judgments and decrees as may be directed by any rule or order shall be registered with the registrar of county court judgments in London in such manner as may be therein directed. *See p. 306; 15 & 16 Vict. c. 54, s. 18.*

16. The county court judges appointed or to be appointed by the lord chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceeding therein, under the 32nd section of an Act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter 108, shall frame the rules and orders for regulating the practice of the county courts under this Act, and forms of proceedings therein, and from time to time amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or any three or more of them, shall be submitted to the lord chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall, from a day to be named by the lord chancellor, be in force in every county court. *See p. 343; 30 & 31 Vict. c. 142, s. 27.*

Power to frame rules and orders under 19 & 20 Vict. c. 108.

17. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are herein authorised to be taken, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the lord chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the lord chancellor, be in force in every county court. *See p. 344; 19 & 20 Vict. c. 108, s. 33.*

Scale of costs to be framed by the judges.

18. If any party in a suit or matter under this Act shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the vice-chancellor authorised as aforesaid, provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the county court the sum of 10*l.* as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it shall think fit, and may also make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorise any party to appeal against any decision of a county court, given upon any question as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this Act, nor to appeal against the decision of a county court on the ground that the proceedings might or should have been taken in any other county court. *See pp. 198, 201, 315.*

Parties aggrieved may appeal.

19. In any case which may be the subject of an appeal under this Act in causes arising within the county palatine of Lancaster, the appeal may be made either to the High Court of Chancery or a vice-chancellor thereof, or to the court of chancery of the county palatine of Lancaster or the vice-

Appeal to be made either to the High Court of Chancery or a vice-chancellor.

chancellor thereof; and that in case of an appeal to the court of chancery for the said county palatine or the vice-chancellor thereof, the order on such appeal shall have the same effect as if it had been made by a vice-chancellor of the High Court of Chancery; but no appeal shall be made to the court of chancery of the said county palatine or the vice-chancellor thereof unless the consent thereto in writing of the respondent or respondents on such appeal, or of his or their solicitor or solicitors, shall be first obtained. *See p. 315.*

20. *Registrar of Bloomsbury county court to retire with compensation.*

21. *This Act and 9 & 10 Vict. c. 95, and any Act amending or altering the same, to be construed together. See p. 344.*

22. *Salary of T. Rodgers, joint registrar at Sheffield, to be 700l. a year.*

## THE COUNTY COURTS ACT, 1866.

[29 VICT. c. 14; April 23, 1866.]

Vacancies in the office of treasurers of county courts not to be filled up.

1. Whenever any person who has been appointed a treasurer of county courts under the provisions of section 23 of the said Act shall die, resign, or be removed, the vacancy caused by the death, resignation, or removal of such person shall not be filled up. *See p. 340; 9 & 10 Vict. c. 95, s. 23.*

Treasury to provide for examination of accounts of registrar and other officers of the courts.

2. The accounts of the registrar and other officers of the courts, of which the person who shall have died, resigned, or been removed was the treasurer, shall be examined by such person or persons, at such time or times, under the supervision of such person as the Commissioners of the Treasury shall think fit, provided that the salaries and expenses of the persons by whom such accounts are to be examined shall not exceed the sum allowed to the then late treasurer for the services of a clerk, and for the travelling expenses of himself and clerk. *See pp. 332, 339, 340.*

Treasurers may retire upon superannuation in certain cases.

3. Where it shall appear to the Commissioners of Her Majesty's Treasury that greater efficiency and economy will be effected by permitting the retirement of a treasurer of county courts, it shall be lawful for the said commissioners to grant to any such treasurer, out of moneys to be provided for the purpose by Parliament, such superannuation allowance as the said commissioners may determine, not exceeding such amount as might be granted under the Superannuation Act, 1859, to a civil servant retiring upon medical certificate. *See p. 340.*

If person appointed to examine accounts be a treasurer's clerk, after probation he shall be deemed a civil servant.

4. If the Commissioners of the Treasury shall think fit to employ in the examination of the accounts of the courts any person whom they may think it desirable so to employ, on account of knowledge acquired by him as clerk to any treasurer of county courts, such clerk shall, if after one year the said commissioners shall continue to employ him, be deemed a servant in the permanent Civil Service of the state, and be entitled to superannuation. *See p. 341.*

5. The Commissioners of the Treasury shall from time to time make such rules as to them shall seem meet for the keeping and rendering of accounts by the registrars and other officers of the courts of which the treasurer has died, resigned, or been removed, and for securing the payment of the sums of money in the hands of such registrars or other officers, as the said commissioners may from time to time in each case direct, into the Bank of England, to the account of the paymaster-general, to be carried by him to an account to be called "The County Courts' Fund," out of which fund the said commissioners shall direct all necessary payments for the purposes of such courts to be made. *See pp. 333, 340.*

Treasury to make rules for keeping and rendering accounts by registrars and other officers of the courts, and direct payments by registrars to be paid into Bank of England.

6. The person under whose supervision the accounts of the courts are to be examined as aforesaid shall once in every year, and oftener if required, on such day as the Commissioners of Her Majesty's Treasury from time to time shall appoint, render to the commissioners for auditing the public accounts of Great Britain a true account in writing of all moneys paid into the aforesaid "County Courts' Fund," at the paymaster-general's, and of moneys paid thereout during the period comprised in such account, in such form and with such particulars as the said commissioners of audit shall from time to time require. This section and the next were intended to be repealed by the 38 & 39 Vict. c. 50, s. 12, but a blunder in the schedule makes the Act c. 4 instead of 14, and the effect of the intended repeal is therefore somewhat doubtful.

Accounts to be rendered to audit board.

7. The accounts to be kept by the aforesaid person on account of any courts shall be examined and audited by the commissioners of audit in the same manner as the accounts of the treasurers of county courts are now audited. *See note to last section.*

Accounts to be audited.

8. All lands, messuages, and other real and personal estates and effects belonging to any county court which shall be vested in any treasurer of county courts who shall die, resign, or be removed, shall vest in such aforesaid person; and all lands, messuages, and other real and personal estates and effects which thereafter may be purchased or belong to any of such courts shall vest in the said person; and upon the death, removal, or resignation of each such person all property whatsoever, real or personal, which was vested in the said person shall vest by force of this Act in the person appointed by the Commissioners of Her Majesty's Treasury to succeed him in the said duty of supervising the examination of the accounts. *See p. 325. Repealed, except so far as it relates to money and securities for money, by 33 & 34 Vict. c. 15, s. 5. See note to 9 & 10 Vict. c. 9, s. 50.*

Property of courts to vest in a person to be appointed by the Treasury.

9. Court-houses. *Repealed by 33 & 34 Vict. c. 15, s. 5.*

10. The registrar of every court the accounts of which are examined under the provisions of this Act shall once in every year, and oftener if required, on such day as shall be appointed by the Commissioners of Her Majesty's Treasury, make out and send to the said commissioners of audit an account of all sums paid over by him to the paymaster-general. *See p. 334.*

Registrar to send to commissioners of audit an account of all sums paid by him to paymaster-general.

On a vacancy in the office of high bailiff, the registrar shall perform the duties of high bailiff, if he shall have been appointed a registrar subsequent to the passing of this Act.

11. Section 28 of the Act passed in the session of Parliament holden in the ninth and tenth years of the reign of Her present Majesty, chapter 95, shall, so far as relates to the conjoining of the offices of registrar and high bailiff, be repealed; and upon the happening of any vacancy in the office of high bailiff of any county court, if the registrar of the court in which the vacancy shall occur shall have been appointed such registrar after the passing of this Act, or, having been appointed before the passing of this Act, shall be willing to perform the duties of the office of high bailiff of such court, no successor to such high bailiff shall, unless the lord chancellor, with the consent of the Commissioners of Her Majesty's Treasury, shall otherwise determine, be appointed, but in either of such cases the registrar shall perform the duties of the high bailiff of such court, and shall have all the powers and authorities now vested in a high bailiff of a county court, and shall be responsible for the acts and defaults of himself and his officers, in like manner as the high bailiff of a county court is now by law responsible for the acts and defaults of himself and his officers: provided, that if a registrar of a court appointed registrar before the passing of this Act shall be unwilling to perform the duties of the office of high bailiff, the person appointed to succeed to the then vacant office of high bailiff shall, unless the lord chancellor, with the consent aforesaid, otherwise direct, cease to hold such office upon the said registrar ceasing to hold his office of registrar. *See pp. 330, 336, 337, 341; 30 & 31 Vict. c. 142, s. 21.*

Additional remuneration to registrar for performing the duties of high bailiff.

12. Every registrar so invested with the powers and authorities of high bailiff shall receive, in addition to his net salary as registrar, a sum equal to one-fifth part of such salary, together with such sum or allowance for service and execution of process as the Commissioners of Her Majesty's Treasury may determine; and such additional salary and allowances shall be paid out of the produce of the fees payable under the provisions of the Act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter 108. *See pp. 334, 335.*

No person to be high bailiff of more than one court.

13. Henceforth no person shall be appointed high bailiff of more than one court. *See p. 336.*

Salaries of future appointed registrars.

14. Section 82 of the said last-recited Act shall, as to registrars of county courts hereafter appointed, be repealed; and every person hereafter to be appointed registrar of a county court shall be paid by salary, and the principle upon which the said salary shall be regulated shall be, that if the plaintiffs entered in the court of which he is registrar do not exceed in the year from the 1st day of January to the 31st day of December inclusive the number of two hundred, the salary shall be 10*l.* for that year; and if the plaintiffs so entered shall exceed two hundred, then such salary shall be increased by sums of 4*l.* for every twenty-five additional plaintiffs up to six thousand inclusive; and such salaries shall be inclusive of all salaries to the clerks employed by the registrar in the business of their respective courts, and of all emoluments whatsoever, except those that may be receivable in equitable proceedings or in bankruptcy;

and in the courts in which the plaints shall exceed six thousand the amount of salary shall be fixed by the said commissioners with the consent of the lord chancellor, but in no case shall the net salary to be allowed exceed 700*l.* a year; and such salaries shall be paid out of the same fund as the salaries of existing registrars are paid. *See p. 336; 30 & 31 Vict. c. 142, s. 30.*

## THE COUNTY COURTS ACT, 1867.

[30 & 31 VICT. c. 142; *August 20, 1867.*]

1. A plaint may be entered in the county court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of bringing the action or suit, or it may be entered, by leave of the judge or registrar, in the county court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months next before the time of action or suit brought, or, with the like leave, in the county court in the district of which the cause of action or suit wholly or in part arose. *See pp. 50, 51, 297.*

Where summons may issue.

2. *Repealed by 38 & 39 Vict. c. 50, s. 12. Substituted provisions, 38 & 39 Vict. c. 50, s. 1.*

3. Where an action is brought in any of the county courts mentioned in the section numbered 18 of the Act passed in the session of Parliament holden in the nineteenth and twentieth years of the reign of Her Majesty, chapter 108, all subsequent proceedings in such action shall be taken and had in such court if the party against whom the proceeding is taken or had shall reside or carry on business within the district of any of such courts or within the city of London. An action may be commenced, and all subsequent proceedings taken and had, in the court held under the provisions of the London (City) Small Debts Extension Act, 1852, by a plaintiff residing or carrying on business within the city of London, against a defendant who resides or carries on business within the district of any of such courts; and an action may be commenced, and all subsequent proceedings taken and had, in any of such county courts by a plaintiff residing or carrying on business within the district of any such county court, against a defendant who resides or carries on business within the city of London. *See pp. 50, 51, 56, 120.*

Proceedings commenced in a metropolitan county court to be continued therein if defendant resides in the districts of one of such courts.

4. No action shall henceforth be brought or be maintainable in any court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which after the commencement of this Act was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given, for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry. *See p. 13.*

No action for beer, &c. consumed on the premises to be brought.

5. If in any action commenced after the passing of this Act in any of Her Majesty's superior courts of record the plaintiff shall recover a sum not exceeding 20*l.* if the action is founded

Costs not recoverable in superior courts



where less than 20*l.* on contract or 10*l.* on tort.

on contract, or 10*l.* if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in such superior court, or unless the court or a judge at chambers shall by rule or order allow such costs. *Substituted for provisions as to costs in former Acts. See 30 & 31 Vict. c. 142, s. 29, and p. 56 et seq.*

6. *Repealed by 38 & 39 Vict. c. 66.*

In certain cases judge of superior courts may order cause to be tried in county court.

7. Where in any action of contract brought or commenced in any of Her Majesty's superior courts of common law the claim endorsed on the writ does not exceed 50*l.*, or where such claim, though it originally exceeded 50*l.*, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding 50*l.*, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a judge at chambers for a summons to the plaintiff to show cause why such action should not be tried in the county court or one of the county courts in which the action might have been commenced; and on the hearing of such summons the judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the county court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such county court as if the action had been originally commenced in such county court; and the costs of the parties in respect of proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings previously had in the superior court shall be allowed according to the scale in use in such latter court. *See pp. 192, 252, 256; 19 & 20 Vict. c. 108, s. 26.*

Proceedings in equity may be transferred to county courts which might have commenced therein.

8. Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a county court, it shall be lawful for any of the parties thereto to apply at chambers to the judge to whose court the said suit or proceeding shall be attached to have the same transferred to the county court or one of the county courts in which the same might have been commenced, and such judge shall have power upon such application, or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the county court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the county court. *See pp. 252, 261, 262, 298.*

Suits in which jurisdiction under

9. The jurisdiction which is given by the Act passed in the session holden in the twenty-eighth and twenty-ninth years of the reign of Her Majesty, intituled "An Act to confer on the



County Courts a limited Jurisdiction in Equity," so far as relates to cases coming within the fourth head of the first section of the said Act, may, from and after the passing of this Act, be exercised in all suits for specific performance of or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase-money, or in case of a lease the value of the property, shall not exceed 500*l*. See *p.* 295.

28 & 29 Vict. c. 99, may be exercised.

10. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a superior court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the court in which the action is brought shall have power to make an order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said court, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a county court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such county court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said county court should have power to try the said action, and the same had been commenced by plaint in the said county court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings in the superior court shall be allowed according to the scale in use in such latter court. See *pp.* 192, 252, 258.

Actions for malicious prosecution, &c., brought in superior courts may be remitted to county court by judge.

11. All actions of ejectment where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, shall exceed the sum of 20*l*. by the year, may be brought and prosecuted in the county court of the district in which the lands, tenements, or hereditaments are situate. See *pp.* 8, 18, 191, 275.

Action of ejectment may be brought where annual value of property does not exceed 20*l*.

12. The county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of 20*l*. by the year, or in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed,

Court may try cases where title comes in question where neither value nor

rent of  
property  
exceeds 20*l*.

or on, through, over, or under which such easement or licence is claimed, shall exceed the sum of 20*l*. by the year : provided that the defendant in any such action of ejectment, or his landlord, may, within one month from the day of service of the writ, apply to a judge at chambers for a summons to the plaintiff to show cause why such action should not be tried in one of the superior courts on the ground that the title to lands or hereditaments of greater annual value than 20*l*. would be affected by the decision in such action ; and on the hearing of such summons the judge, if satisfied that the title to other lands would be so affected, may order such action to be tried in one of the superior courts, and thereupon all proceedings in the county court in such action shall be discontinued. *See pp.* 8, 18, 191, 277, 281, 285.

Appeal in  
actions of  
ejectment  
and in ac-  
tions where  
title comes  
in question,  
and by leave  
of the judge,  
allowed in  
all actions  
in which it  
is not now  
allowed.

13. An appeal from the decision of a county court on the same grounds and subject to the same conditions as are provided by section 14 of the Act of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter 61, shall be allowed in all actions of ejectment, and in all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, and, with the leave of the judge, an appeal shall be allowed in actions in which an appeal is not now allowed, if the judge shall think it reasonable and proper that such appeal should be allowed. *See pp.* 83, 198, 201, 235, 274, 280, 285, 292.

Court may  
award costs  
where cause  
is struck out  
for want of  
jurisdiction.

14. Whenever an action or suit is brought in a county court which the court has no jurisdiction to try, the judge shall order the cause to be struck out, and shall, unless the parties consent to the court having jurisdiction to try the same, have power to award costs in the same manner, to the same extent, and recoverable in the same manner as if the court had jurisdiction in the matter of such plaint, and the plaintiff had not appeared, or had appeared and failed to prove his demand. *See pp.* 18, 117, 118, 171, 182, 183, 286.

Scale of  
costs to be  
framed by  
the judges.

15. The judges of county courts appointed or to be appointed by the lord chancellor from time to time to frame rules and orders for regulating the practice of the courts and forms of proceeding therein under the 32nd section of the County Courts Act, 1856, shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are herein authorised to be taken, or with respect to proceedings in plaints for the recovery of tenements, or in actions of replevin, and from time to time to amend such scale, and such scale or amended scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the lord chancellor, who from time to time may allow or disallow or alter the same, and the scale or amended scale so allowed or altered shall, from a day to be named by the lord chancellor, be in force in every county court. *See pp.* 190, 192, 344.

Proceed-  
ings where  
defendant  
does not  
appear.

16. If in any action founded on contract a defendant shall not appear at the hearing, either in person or by some person duly authorised on his behalf, and no sufficient excuse for the defendant's absence shall be shown, the registrar may, by leave

of the judge, upon due proof of the service of the summons and of the debt being due and owing, enter up judgment for the plaintiff, and have the same power to make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the cause, as the judge of the county court has; and such judgment shall be as valid as if both parties had attended the court; but the judgment and any execution thereon may be set aside, and a new trial granted, upon such terms, if any, as the judge may think fit to require. *See p. 179; 9 & 10 Vict. c. 95, s. 80.*

17. Where a defendant appearing at the hearing either in person or by some person duly authorised to appear for him admits the claim, the registrar may, by leave of the judge, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the court. *Where defendant appears and admits the claim. See p. 179; 13 & 14 Vict. c. 61, ss. 8, 9.*

18. Repealed by 33 & 34 Vict. c. 15, s. 5.

19. Wherever in section 56 of an Act passed in the session of Parliament holden in the ninth and tenth years of the reign of Her present Majesty, chapter 95, the words "one of Her Majesty's principal secretaries of state" occur, the words "the lord chancellor" shall be read in lieu thereof, and the power to be therein exercised by one of Her Majesty's principal secretaries of state shall hereafter be in the lord chancellor, and shall be exercised by him. *Lord chancellor to exercise power given to a secretary of state by s. 56 of 9 & 10 Vict. c. 95. See p. 328.*

20. Any judge of county courts shall be capable of acting for any other judge of county courts in or without the districts presided over by such judge, and the deputy of a judge of county courts or registrar, duly appointed, shall have all the powers and privileges and perform all the duties of the judge or registrar for whom he shall have been so appointed which have been given or shall be given to such judge or registrar by any Act passed or to be passed, anything to the contrary notwithstanding; and where, in the absence of a judge, a deputy of such judge shall, from illness or otherwise, be incapable of performing his duties as such deputy, it shall be lawful for the lord chancellor to appoint another person, duly qualified, to be the deputy of such judge. *Judges to be auxiliary to one another, and deputy of judge or registrar to have all the powers of his principal. See pp. 327, 329, 331; 9 & 10 Vict. c. 95, s. 20; 19 & 20 Vict. c. 108, ss. 6, 11.*

21. Every registrar who may be invested with the powers and authorities of a high bailiff under the provisions of the County Courts Act, 1866, shall also be invested with the powers and authorities possessed by the high bailiff to the performance of whose duties he may succeed. *Registrars who may act as high bailiffs under 29 & 30 Vict. c. 14, to have the powers of the officer whom they succeed. See p. 335.*

22. Every bailiff duly appointed by a high bailiff or a registrar may serve or execute any process which by any Act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against therein. *Bailiffs to serve any process directed to be served by high bailiff. See p. 337; 9 & 10 Vict. c. 95, s. 31; 19 & 20 Vict. c. 108, ss. 14, 16.*

23. Upon the death, resignation, or removal of any person being joint registrar with another of a county court, no other person shall be appointed to such office of registrar jointly or *On death of a joint registrar,*

survivor  
to be sole  
registrar.

otherwise, until both the persons holding the joint office shall have died, been removed, or resigned, unless the lord chancellor shall otherwise order. *See p. 330; 9 & 10 Vict. c. 95, s. 25.*

Trustees  
may pay  
trust  
moneys or  
transfer  
stock and  
securities  
into the  
court.

24. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of an Act passed in the session of Parliament holden in the tenth and eleventh years of the reign of Her present Majesty, chapter 96, "for better securing trust funds, and for the relief of trustees," where the same does not exceed in amount or value the sum of 500*l.* upon the filing by such trustees or other person, or the major part of them, to or with the registrar of the county court within the district of which such persons or any of them shall reside, an affidavit shortly describing the instrument creating the trust according to the best of their knowledge, may in the case of money be paid into a post-office savings bank established in the town in which the county court is held in the name of the registrar of such court, in trust to attend the orders of the court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank the registrar shall record the same, and give to them an acknowledgment in such form as may be directed by any rule of practice, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and in case of stocks or securities may be transferred or deposited into or in the names of the treasurer and registrars of such court, in trust to attend the orders of the court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited: provided that, where there is not a treasurer, a person shall be nominated by rule of practice to whom the transfer or deposit in conjunction with the registrar may be made. *See pp. 296, 313.*

Extension  
of powers  
given by  
12 & 13 Vict.  
c. 74, to  
Court of  
Chancery to  
county  
courts.

25. For the purposes of the last section all the powers and authorities given to the Court of Chancery by the Act passed in the session of Parliament holden in the twelfth and thirteenth years of the reign of Her present Majesty, chapter 74, "for the further relief of trustees," shall be possessed and exercised by the county courts, and any order made by virtue of such powers and authorities shall fully protect and indemnify all persons acting under or in pursuance of such order. *See p. 296.*

Moneys paid  
into a  
county  
court in  
equitable  
proceedings  
may be  
invested in  
a post-office  
savings  
bank.

26. Any money paid into a county court in equitable proceedings shall, unless otherwise ordered by the court, be invested by the registrar of the court in his name as registrar, within forty-eight hours of its payment into court, in a post-office savings bank established in the town in which the court is held without restriction as to amount, and without the declaration required of a depositor in a savings bank; and no part of any money invested in a post-office savings bank under this Act shall be paid out to any registrar, except upon an authority addressed to the postmaster-general by the Commissioners of Her Majesty's Treasury. *See pp. 310, 331.*

27. Any proceeding taken in the county courts under the County Courts Act, 1865, conferring an equitable jurisdiction on such courts, may, if so directed by rules and orders to be made under such Act, be commenced by summons. *See pp. 300, 343; 28 & 29 Vict. c. 99, s. 16.*

Proceedings in equity may be commenced by summons.

28. No action or suit to be commenced in any hundred or other inferior court not a court of record.

29. Where any action or suit shall be brought in any other court than the superior courts of law which could have been brought in a county court, and the verdict recovered is for a less sum than 10*l.*, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action or suit had been brought in such county court, unless the judge shall certify that the action or suit was a fit one to be brought in such other court. *See sect. 5, ante, and p. 69.*

Where action unnecessarily brought in an inferior court, only county court costs to be allowed.

30. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under the jurisdiction given to the courts by this Act, by receiving for their own use such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the lord chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders: provided that it shall be lawful for the said commissioners, with the like consent as aforesaid, to order that the registrars and high bailiffs shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowances as may in each case be thought just; and from and after a day to be named in the order the said fees shall be accounted for and paid over by such officers in such manner as may be therein directed. *See pp. 335, 340.*

Remuneration of registrars and high bailiffs in matters under this Act.

31. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of a county court, or in respect of the proceeds or value thereof, by any person, it shall be lawful for the registrar of the court, upon application of the high bailiff, as well before as after any action brought against him, to issue a summons calling before the said court as well the party issuing such process as the party making such claim, and the judge of the court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and shall also adjudicate between such parties, or either of them, and the high bailiff, with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any suit brought in such court, and shall be final and conclusive as between the parties, and as between them, or either of them, and the high bailiff, unless the decision of the court shall be in either case appealed from, and upon the issue of the summons any action which shall have been brought in any court in respect of such

High bailiff may interplead where claims as to goods taken in execution are made.

claim, or of any damage arising out of the execution of such process, shall be stayed. *See p. 232. Substituted for 9 & 10 Vict. c. 95, s. 118, and see 19 & 20 Vict. c. 108, s. 72.*

City of  
London  
court.

32. *The section numbered 26 in the County Courts Act, 1856, shall extend and apply to the City of London Court. Repealed by 38 & 39 Vict. c. 50, s. 12. See remarks as to this repeal, ante, p. 252, note (b).*

Enactments  
repealed.

33. *The several enactments specified in schedule C to this Act are hereby repealed. Repealed by 38 & 39 Vict. c. 66.*

34. *This Act and other County Courts Acts in schedule D to be construed together. See pp. 324, 344.*

Meaning of  
the words  
"county  
court" in  
this and  
future Acts,  
and shall  
include the  
City of  
London  
Court.

35. *The words "county court," when used in this Act or in any future Act, shall mean a court holden by virtue of the Act passed in the session of Parliament holden in the ninth and tenth years of the reign of Her present Majesty, chapter 95, "for the more easy recovery of small debts and demands in England," and shall mean and include the courts held by virtue of the London (City) Small Debts Extension Act, 1852, unless otherwise provided, and such court shall be holden by the name of "The City of London Court," and shall be a court of record, and its decisions shall be subject to appeal in the same way and on the same conditions as the decisions of a county court are subject for the time being. The rules and orders in force for the time being for regulating the practice of and costs in the county courts, and forms of proceedings therein, shall be in force in the City of London Court, to the exclusion of any rules and orders now in force in that court; and the same fees shall be taken for proceedings in which jurisdiction is hereby given to the court as upon similar proceedings in the county courts, and such fees shall be applied in the same manner as the fees taken under the provisions of the said Act of 1852: provided that nothing in this Act, or in any of the Acts specified in schedule D to this Act, shall take away, lessen, or diminish any of the powers, rights, or privileges of the judge of the said court, or the authority of the mayor, aldermen, and commons of the city of London in common council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority existed previously to the passing of this Act. See pp. 50, 324, 344.*

## SCHEDULES.

*Schedules A and B contained forms of affidavit and summons for a judgment by default under section 2. That section is now repealed by 38 & 39 Vict. c. 59, and new forms substituted.*



## SCHEDULE C.

| Reference to Act.           | Title of Act.                                                                                                                                                          | Extent of Repeal.                                                            |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 9 & 10 Vict.<br>c. 95.      | An Act for the more easy recovery of small debts and demands in England.                                                                                               | The whole of the sections numbered respectively 60, 118, 128, and 129.       |
| 13 & 14 Vict.<br>c. 61.     | An Act to extend the Act for the more easy recovery of small debts and demands in England, and to amend the same.                                                      | The whole of the sections numbered respectively 11 and 12.                   |
| 15 & 16 Vict.<br>c. 54.     | An Act further to facilitate and arrange proceedings in the county courts.                                                                                             | The whole of section 4.                                                      |
| 15 & 16 Vict.<br>c. lxxvii. | An Act for the more easy recovery of small debts and demands in the city of London and liberties thereof.                                                              | The whole of the sections numbered respectively 118, 119, 120, 121, and 122. |
| 19 & 20 Vict.<br>c. 108.    | An Act to amend the Acts relating to county courts.                                                                                                                    | The whole of the sections numbered respectively 15 and 30.                   |
| 23 & 24 Vict.<br>c. 126.    | An Act for the further amendment of the process, practice, and mode of pleading in and enlarging the jurisdiction of the superior courts of common law at Westminster. | The whole of section 34.                                                     |



SCHEDULE C—*continued.*

| Reference to Act.       | Title of Act.                                                           | Extent of Repeal.                                                  |
|-------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------|
| 28 & 29 Vict.<br>c. 99. | An Act to confer on the county courts a limited jurisdiction in equity. | The fourth head of suits and matters mentioned in the 1st section. |

*This schedule is repealed by 38 & 39 Vict. c. 66, but is retained to show the course of legislation.*

## SCHEDULE D.

| Acts.                                                                                                                                                             | Short Title.                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 9 & 10 Vict. c. 95. An Act for the more easy recovery of small debts and demands in England.                                                                      | The County Courts Act, 1846. |
| 12 & 13 Vict. c. 101. An Act to amend the Act for the more easy recovery of small debts and demands in England, and to abolish certain inferior courts of record. | The County Courts Act, 1849. |
| 13 & 14 Vict. c. 61. An Act to extend the Act for the more easy recovery of small debts and demands in England.                                                   | The County Courts Act, 1850. |
| 15 & 16 Vict. c. 54. An Act further to facilitate and arrange proceedings in the county courts.                                                                   | The County Courts Act, 1852. |
| 19 & 20 Vict. c. 108. An Act to amend the Acts relating to the county courts.                                                                                     | The County Courts Act, 1856. |

SCHEDULE D—*continued*.

| Acts.                                                                                                                                                                                                           | Short Title.                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 21 & 22 Vict. c. 74. An Act for the re-arrangement of the districts of the county courts among the judges thereof.                                                                                              | The County Courts Act, 1858. |
| 22 & 23 Vict. c. 57. An Act limiting the power of imprisonment for small debts exercised by the county court judges.                                                                                            | The County Courts Act, 1859. |
| 28 & 29 Vict. c. 99. An Act to confer on the county courts a limited jurisdiction in equity.                                                                                                                    | The County Courts Act, 1865. |
| 29 & 30 Vict. c. 14. An Act for the abolition of the offices of treasurer and of high bailiffs of county courts as vacancies shall occur, and to provide for the payment of future registrars of county courts. | The County Courts Act, 1866. |

THE COUNTY COURTS (ADMIRALTY)  
ACT, 1868.[31 & 32 VICT. c. 71; *July 31, 1868.*]

1. This Act may be cited as "The County Courts Admiralty Short title. Jurisdiction Act, 1868."

2. If at any time after the passing of this Act it appears to Her Majesty in Council, on the representation of the lord chancellor, expedient that any county court should have Admiralty jurisdiction, it shall be lawful for Her Majesty, by Order in Council, to appoint that court to have Admiralty jurisdiction accordingly, and to assign to that court as its district for Admiralty purposes any part or parts of any one or more district or districts of county courts; and the district so constituted for that court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the

Appoint-  
ment of  
county  
courts for  
Admiralty  
purposes.

shore thereof, shall be deemed its district for Admiralty purposes; and accordingly the judge and all officers of the court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the court for all purposes; and, from a time to be specified in each such order, this Act shall have effect in and throughout the district so constituted; and any such order may be from time to time varied as seems expedient; and a county court so appointed to have Admiralty jurisdiction, and no other county court shall, for the purposes of this Act, be deemed a county court having Admiralty jurisdiction: provided that no judge of a county court, except the judges of the London court, shall have jurisdiction in the city of London.

Extent of Admiralty jurisdiction of county courts.

3. Any county court having Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes):

1. As to any claim for salvage—any cause in which the value of the property saved does not exceed 1,000*l.*, or in which the amount claimed does not exceed 300*l.*:
2. As to any claim for towage, necessities, or wages—any cause in which the amount claimed does not exceed 150*l.*:
3. As to any claim for damage to cargo, or damage by collision—any cause in which the amount claimed does not exceed 300*l.*:
4. Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any county court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction. *See 32 & 33 Vict. c. 51, s. 4.*

Restrictions on county court jurisdiction in certain cases.

4. Nothing in this Act, or in any Order in Council under it, shall confer on a county court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any Admiralty jurisdiction by way of appeal.

No county court other than that appointed to have jurisdiction.

5. From and after the time specified in each Order in Council under this Act appointing a county court to have Admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no county court, other than the county court so appointed, shall have jurisdiction within that district in any Admiralty cause: provided that all Admiralty causes at that time pending in any county court within that district may be continued as if no such Order in Council had been made.

As to transfer from county court by

6. The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a county court, may, if it shall think fit, with previous notice to the other party,

transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the court may seem fit.

7. If during the progress of an Admiralty cause in a county court it appears to the court that the subject-matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the court, the validity of any order or decree theretofore made by the court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the court shall retain jurisdiction) the court shall by order transfer the cause to the High Court of Admiralty; but that court may, nevertheless, if the judge of that court in any case thinks fit, order that the cause shall be prosecuted in the county court in which it was commenced, and it shall be prosecuted accordingly.

8. If during the progress of an Admiralty cause in a county court it shall appear to the court that the cause could be more conveniently prosecuted in some other county court, or in the High Court of Admiralty of England, the court may by order transfer it to such other county court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly.

9. If any person shall take in the High Court of Admiralty of England or in any superior court proceedings which he might, without agreement, have taken in a county court, except by order of the judge of the High Court of Admiralty or of such superior court or of a county court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the county court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any superior court in respect of property saved, the value of which when saved does not exceed 1,000*l.*, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the judge of the High Court of Admiralty or of a superior court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a superior court.

10. In an Admiralty cause in a county court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in county courts; save and except that in any Admiralty cause of salvage, towage, or collision the county court judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the judge of the High Court of Admiralty is now assisted by nautical assessors.

11. In any such Admiralty cause as last aforesaid it shall be lawful for the judge of the county court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct two nautical assessors, and such nautical assessors shall attend and assist accordingly.

order of High Court of Admiralty.

As to transfer of causes by order of county court to High Court of Admiralty.

As to transfer of causes to other county courts or Court of Admiralty.

Restrictions on proceedings in the Court of Admiralty or superior court.

Powers, &c. of judges and registrars.

Power to judge of county court to summon nautical assessors to his assistance.

Decrees in county courts in Admiralty causes to have same force as those in civil causes.

12. The decree of the county court in an Admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said court are enforced in ordinary civil causes, save and except as in this Act otherwise provided.

Admiralty causes to be heard at usual courts.

13. The judge of every county court having Admiralty jurisdiction shall hear and determine Admiralty causes at the usual courts held within his jurisdiction, or at special courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of his court.

Appointment of assessors in county court.

14. The registrar of each county court having Admiralty jurisdiction shall from time to time frame a list, to be approved by the judge of the High Court of Admiralty before whom the same shall be laid by the county court judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the county court, to act as assessors in that court, and shall cause the list to be published in the "London Gazette."

Attendance of assessors.

15. Every person named in the list of assessors so framed and approved shall attend the county court under such circumstances, and in such rotation, and subject to such regulations, and shall receive such fees for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the court, to a penalty not exceeding 5*l*.

Removal of assessors.

16. Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment.

Remuneration of registrars.

17. The registrars of the county courts shall be remunerated for their duties in Admiralty causes by receiving for their own use such fees as general orders shall direct.

Scale of costs.

18. A scale of costs and charges in Admiralty causes in the county courts shall be prescribed by general orders.

Power to registrars to administer oaths and take evidence.

19. The registrar of a county court shall have power to administer oaths in relation to any Admiralty cause in a county court; and any person who shall wilfully depose or affirm falsely before the registrar in any Admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

Evidence before registrar receivable in Admiralty Court.

20. Evidence taken in any Admiralty cause before the registrar of a county court, as the judge of a county court or general orders shall direct, shall be received as evidence in any other county court, saving all just exceptions; and the registrar of any county court shall, for the purpose of the examination of any witnesses within the district of that court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions.

21. Proceedings in an Admiralty cause shall be commenced—

1. In the county court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings. As to proceedings in county court for commencement of cause.

2. If the foregoing rule be not applicable, then in the county court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England resides, or if such owner or agent does not reside within any such district, then in the county court having Admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides.

3. If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such county court having Admiralty jurisdiction as general orders direct.

4. In any case in the county court or one of the county courts having Admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause.

22. In an Admiralty cause in a county court, if evidence be given to the satisfaction of the judge, or in his absence the registrar of the court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the court before the plaintiff's claim is satisfied, it shall be lawful for the said judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an Admiralty cause in a county court otherwise than in execution. Limitation of arrest.

23. For the execution of any decree or order of a county court in an Admiralty cause the court may order, and the registrar on such order may seal and issue, and any officer of any county court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the county court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order of the county court for transfer of the proceedings for sale, with or without (as the judge of the county court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly. Power to issue process.

24. Such decrees and orders of county courts in Admiralty causes as general orders shall direct shall be registered with Registration of

decrees and orders. the registrar of county court judgments in London in such manner as general orders shall direct.

Concurrent jurisdiction of the court of passage. 25. The court of passage of the borough of Liverpool shall, upon an Order in Council being made which shall appoint the county court of Lancashire holden at Liverpool to have Admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that Order are conferred on the said county court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the court of passage extends, or to alter the rules and regulations for holding the said court, or to take away or restrict any jurisdiction, power, or authority already vested in that court; and fees received in that court under this Act shall be dealt with as fees received in that court under its ordinary jurisdiction.

Appeal to Court of Admiralty. 26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an Admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct.

Time for appeal. 27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time.

Agreement not to appeal. 28. No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by them, or by their attorneys or agents, that the decree or order shall be final; and any such agreement need not be stamped, except in respect of any fee imposed by general orders.

29. *Repealed by 38 & 39 Vict. c. 50, s. 10, substituted.*

Costs of appeal. 30. On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the appellate court shall otherwise direct.

No appeal unless amount exceeds 50*l*. 31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of 50*l*.

Conduct of sale, &c. in Court of Admiralty. 32. On an appeal under this Act, the judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction, and all powers and authorities relating thereto accordingly.

In certain cases causes 33. In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act 1 & 2 Geo. 4, c. 76, s. 18,



causes may be transferred by the county court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports Court as is by this Act vested in the judge of the High Court of Admiralty.

may be transferred by county court and appeals made to Court of Admiralty of the Cinque Ports.

34. This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force.

County Court Acts applied to this.

35. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the Admiralty jurisdiction of the county courts, the forms of processes and proceedings therein or issuing therefrom, and the days and places of sittings for Admiralty causes, the duties of the judges and officers thereof, and the fees to be taken therein.

Practice, &c. to be regulated by general orders.

36. General orders under this Act shall be made by the lord chancellor, with the advice and assistance of the judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the Commissioners of Her Majesty's Treasury.

Authority for making general orders.

## THE COUNTY COURTS (ADMIRALTY) ACT, 1869.

[32 & 33 VICT. c. 51; August 2, 1869.]

1. This Act may be cited as "The County Courts Admiralty Jurisdiction Amendment Act, 1869," and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868.

Short title.

2. Any county court appointed or to be appointed to have Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes:

Extension of jurisdiction over ships and goods.

1. As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed 300*l.*:

If parties agree, causes in respect of claims of higher amount may be determined by county court.

2. As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorneys or agents, that any county court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

3. The jurisdiction conferred by this Act and by the County Courts Admiralty Jurisdiction Act, 1868, may be exercised either by proceedings *in rem* or by proceedings *in personam*.

Proceedings *in rem* or *in personam*.

Amendment  
of sect. 3 of  
31 & 32 Vict.  
c. 71.

4. The 3rd section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed 300*l*.

As to ap-  
pointment  
of mer-  
cantile  
assessors.

5. In any Admiralty or maritime cause the judge may, if he think fit, or on the request of either party, be assisted by two mercantile assessors; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors.

Power of  
assessor of  
court of  
passage to  
make  
general  
rules and  
orders.

6. The assessor of the court of passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the Admiralty and maritime jurisdiction in the said court, and for other purposes mentioned in section 35 of the County Courts Admiralty Jurisdiction Act, 1868; and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act.

## THE DEBTORS ACT, 1869.

[32 & 33 VICT. c. 62; *August 9, 1869.*]

### *Abolition of Imprisonment for Debt.*

Abolition of  
imprison-  
ment for  
debt, with  
exceptions.

4. With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment :

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract :
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace :
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control :
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order :
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order :
6. Default in payment of sums in respect of the payment of which orders are in this Act authorised to be made :

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period

than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money. See p. 308.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court. Provided—(1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions: that is to say,

Saving of power of committal for small debts.

- (a) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued.
- (b.) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed 50*l.*, exclusive of costs:
- (c.) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any county court, shall be deemed to be substituted for sections 98 and 99 of the County Courts Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in

pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any). *See pp. 240-48, 308.*

## THE COUNTY COURTS (BUILDINGS) ACT, 1870.

[33 & 34 VICT. c. 15; *June 20, 1870.*]

- |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title.                                           | 1. This Act may be cited as "The County Courts (Buildings) Act, 1870."                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Definition of "commissioners of works."                | 2. In this Act the term "the commissioners of works" means the Commissioners of Her Majesty's Works and Public Buildings, as incorporated by the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter 28, intituled "An Act to amend an Act of the fourteenth and fifteenth years of Her present Majesty, for the direction of public works and buildings, and to vest the buildings appropriated for the accommodation of the supreme courts of justice in Edinburgh in the Commissioners of Her Majesty's Works and Public Buildings." <i>See p. 325.</i>                                                                                                                                                                                                                  |
| Transfer of property from treasurers to commissioners. | 3. All property, real and personal (other than money and securities for money, books, papers, and records), belonging to any county court, of or to which the treasurer of any county court or any other person is seised, possessed, or entitled in trust for a county court, under the sections of the Acts mentioned in the schedule to this Act, shall, on the passing of this Act, pass to and be vested in the commissioners of works, for the same estate and interest, and subject to the same covenants, conditions, agreements, and liabilities, for and subject to which the same were held by the said treasurer or other person; and such treasurer or other person shall be discharged from such covenants, conditions, agreements, and liabilities. <i>See p. 325; note to 9 &amp; 10 Vict. c. 95, s. 50.</i> |
| As to providing courts, offices, &c.                   | 4. The commissioners of works, with the approval of the Commissioners of Her Majesty's Treasury, shall from time to time build, purchase, hire, or otherwise provide such court-house, offices, and buildings as may be necessary for carrying on the business of any county court, and cause the same to be furnished, cleaned, lighted, and warmed, and give such direc-                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

tions to the registrar of each court with regard to the hiring and dismissing of servants as shall seem fit.

For the purposes of any such purchase, the Lands Clauses Consolidation Act, 1845, and the Acts amending the same (except so much thereof as relates to the purchase of land otherwise than by agreement), are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to be the commissioners of works. *See p. 325.*

5. The Acts mentioned in the schedule to this Act are hereby repealed, to the extent in the third column of the said schedule mentioned, without prejudice to anything already done or suffered or any right already acquired or accrued.

Provisions  
of Acts in  
schedule  
repealed.

## SCHEDULE.

| Year & Chapter.          | Title.                       | Extent of Repeal.                                                                        |
|--------------------------|------------------------------|------------------------------------------------------------------------------------------|
| 9 & 10 Vict.<br>c. 95.   | The County Courts Act, 1846. | Sections 48 and 50 to 55, both inclusive.                                                |
| 29 & 30 Vict.<br>c. 14.  | The County Courts Act, 1866. | Section 8, except so far as it relates to money and securities for money, and section 9. |
| 30 & 31 Vict.<br>c. 142. | The County Courts Act, 1867. | Section 18.                                                                              |

## THE COUNTY COURTS ACT, 1875.

[38 & 39 VICT. c. 50; August 2, 1875.]

1. In any action in a county court for a debt or liquidated money demand, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the form in schedule A to this Act) a summons in the form or to the effect given in schedule B to this Act, and if such last-mentioned summons be issued it shall be personally served on the defendant, and if the defendant shall not, within sixteen days after service of the summons, inclusive of the day of service, give notice in writing, signed by himself or his attorney, to the registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after sixteen days and within two months from the day of service, upon proof of its service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar.

In respect  
of certain  
demands,  
plaintiff  
may require  
defendant  
to give  
notice of  
intention  
to defend,  
on pain of  
judgment  
by default.

The order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff, or his attorney, shall in writing have consented to take at the time of the entry of the plaint or of the judgment.

Where the defendant shall have given notice of defence, the registrar shall, immediately upon the receipt of such notice, send a letter to the plaintiff or his attorney by post, stating therein that the defendant has given notice of his intention to defend, and shall send by post, to both plaintiff and defendant, notice of the day upon which he shall have fixed that the trial shall take place, at least six clear days before the day so fixed.

Where the defendant shall neglect to give such notice of defence, the judge or registrar shall, upon an affidavit disclosing a defence upon the merits, and satisfactorily explaining his neglect, let in the defendant to defend, upon such terms as he may think just.

Where personal service cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evades service of the same, it shall be lawful for the judge or registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge or registrar may seem fit. *See p. 266.*

Provided always, that no other summons than a summons in the ordinary form shall, without leave of the judge or registrar, be issued where the amount claimed shall not exceed 5*l.*, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling, and the leave of the judge or registrar shall be given in accordance with regulations to be prescribed by rules of court. *Substituted for 19 & 20 Vict. c. 108, s. 28, and 30 & 31 Vict. c. 142, s. 2. See pp. 115, 126-28, 192.*

Summonses  
to wit-  
nesses.

2. Either of the parties to an action or any other proceeding may obtain of the registrar of the court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which are now or may be required to be served personally, may, under such regulations as may be prescribed by rules of court, be served by a bailiff of the court or otherwise. *See p. 156. Substituted for 9 & 10 Vict. c. 95, s. 85. As to obtaining attendance of prisoners, 19 & 20 Vict. c. 108, s. 31.*

How service  
of sum-  
monses by a  
bailiff may  
be proved.

3. Where any summons or other process of the court is served by a bailiff of any county court, the service may be proved by endorsement on a copy of the summons or process under the hand of such bailiff, showing the fact and mode of the service of such summons or process; and any such bailiff wilfully and corruptly endorsing any false statement on the copy of a summons or other process shall be guilty of a misdemeanour, and on conviction thereof shall be removed from



his office or employment, and shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury. *See pp. 123, 124; 9 & 10 Vict. c. 95, s. 62.*

4. A judge of county courts shall, whether within the district of any of his courts or not, have jurisdiction to make any order, or exercise, on an *ex parte* application, any authority or jurisdiction in any action or proceeding pending in any of the courts of which he is judge, which, if the same related to an action or proceeding pending in one of Her Majesty's superior courts, might be given, made, or exercised by a judge of such last-mentioned courts in chambers, and, with the consent of both parties to an action or proceeding, to hear and decide any matter at any place either within or without any such district. *See p. 165, et seq.*

Judge may do certain things within or without his circuit.

5. In any action or proceeding it shall be lawful for the judge, if he think fit, on the application of either party, to summon to his assistance, in such manner as may be prescribed by rules of court, one or more persons of skill and experience in the matter to which the action or proceeding relates, who may be willing to sit with the judge and act as assessors; and their remuneration for so sitting shall be at such rate as may be prescribed by rules of court, and shall be costs in the cause or proceeding, unless otherwise ordered by the judge; but where any person is proposed to be summoned as an assessor, objection to him, either personally, or in respect of his qualification, may be taken by either party in manner to be prescribed by rules of court. *See pp. 162, 163.*

As to appointment of assessors.

6. In any cause, suit, or proceeding other than a proceeding in bankruptcy, tried or heard in any county court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction, or decision by motion to the court to which such appeal lies, instead of by special case, such motion to be *ex parte* in the first instance, and to be granted on such terms as to costs, security, or stay of proceedings as to the court to which such motion shall be made shall seem fit. And if the court to which such appeal lies be not then sitting, such motion may be made before any judge of a superior court sitting in chambers. And at the trial or hearing of any cause, suit, or proceeding, the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall, at the expense of any person or persons, being party or parties in any such cause, suit, or proceeding, requiring the same for the purpose of appeal, furnish a copy of such note, or allow a copy to be taken of the same by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall be used and received on such motion and at the hearing of such appeal. *See pp. 198, 214, 315.*

Appeal may be made within eight days without stating special case.



Remuneration of officers under this and other Acts passed or to be passed.

7. The Treasury shall direct whether any and what remuneration shall be allowed to any person performing any duties under this Act, or under any Act passed heretofore or to be passed, where by such Act no remuneration is or shall be given for the performance of duties by officers of the courts; and such remuneration shall be paid out of the fees which the Treasury, with the consent of the lord chancellor, is empowered by section 79 of the County Courts Act, 1856, to order to be taken on proceedings which were then authorised or might thereafter be authorised to be taken in the county courts.

This section shall not apply to the City of London Court. *See pp. 324, 344.*

Scale of costs to be framed by the judges.

8. The judges of county courts appointed or to be appointed by the lord chancellor from time to time to frame rules and orders for regulating the practice of the courts and forms of proceeding therein under the 32nd section of the County Courts Act, 1856, shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are now, or shall hereafter be, authorised to be taken in such courts, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the lord chancellor, who from time to time may allow or disallow or alter the same, and the scale or amended scale, so allowed or altered, shall, from a day to be named by the lord chancellor, be in force in every county court. *See pp. 190, 343, 344.*

Appointment of high bailiff as registrar to vacate high bailiffship.

9. The appointment of a high bailiff of a county court as registrar of a county court shall vacate the office of high bailiff held by such appointee. *See p. 336.*

As to appeals to the Queen in Council in Admiralty causes.

10. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the county court when such decree or order affirms the judgment of the county court, except by express permission of the judge of the High Court of Admiralty. When upon an appeal the High Court of Admiralty alters the judgment of the county court no leave to appeal to Her Majesty in Council shall be necessary.

In what cases assessors shall be summoned.

11. Where an Admiralty cause has been heard in the county court with the assistance of nautical assessors, elder brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court of Admiralty if either party shall require the same, and the judge of the High Court shall be of opinion that the assistance of the elder brethren is necessary or desirable.

Enactments in schedule C repealed.

12. The several enactments specified in schedule C to this Act are hereby repealed to the extent mentioned in the third column of the said schedule; but this repeal shall not affect the course of any proceeding taken before such repeal.

This Act and other County Courts' Acts to be construed together.

13. This Act and the County Courts Act, 1846, and the several Acts altering or amending the same, shall be construed together as one Act, and this Act may be cited as "The County Courts Act, 1875." *See p. 344.*

Commencement of Act.

14. This Act shall come into operation on the 2nd day of November next after the passing hereof.

## SCHEDULE A.

*See Form 15.*

## SCHEDULE B.

*See Form 16.*

## SCHEDULE C.

| Reference to Act.          | Title of Act.                                                                                                                                                                             | Extent of Repeal.                                                                                                                            |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 9 & 10 Vict.<br>c. 95.     | An Act for the more easy recovery of small debts and demands in England.                                                                                                                  | So much of section 62 as requires the service of a summons or other process to be proved by affidavit, and the whole of sections 85 and 103. |
| 19 & 20 Vict.<br>c. 108.   | An Act to amend the Acts relating to county courts.                                                                                                                                       | The whole of the sections numbered respectively 28 and 29.                                                                                   |
| 29 & 30 Vict.<br>c. 4 (a). | An Act for the abolition of the offices of treasurer and of high bailiff of county courts as vacancies shall occur, and to provide for the payment of future registrars of county courts. | The whole of sections 6 and 7.                                                                                                               |
| 30 & 31 Vict.<br>c. 142.   | An Act to amend the Acts relating to the jurisdiction of the county courts.                                                                                                               | The whole of sections 2 and 32.                                                                                                              |
| 31 & 32 Vict.<br>c. 71.    | An Act for conferring Admiralty jurisdiction on the county courts.                                                                                                                        | The whole of section 29.                                                                                                                     |

(a) This is intended for 29 Vict. c. 14.

## APPENDIX D.

### THE CONSOLIDATED ORDERS AND RULES, 1875.

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|-------|--------|-------|-------|--------------|-------|
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| 2     | —      | —     | 44    | —            | 4     |
| 3     | I.     | 2     | 45    | VII.         | 9     |
| 4     | IV.    | 9     | 46    | VIII.        | 1     |
| 5     | I.     | 4     | 47    | "            | 2     |
| 6     | "      | 3     | 48    | "            | 5     |
| 7     | II.    | 2     | 49    | "            | 3     |
| 8     | "      | 1     | 50    | "            | 6     |
| 9     | —      | —     | 51    | "            | 8     |
| 10    | II.    | 4     | 52    | "            | 9     |
| 11    | "      | 5     | 53    | "            | 14    |
| 12    | "      | 7     | 54    | "            | 15    |
| 13    | —      | —     | 55    | "            | 16    |
| 14    | II.    | 3     | 56    | "            | 17    |
| 15    | "      | 8     | 57    | "            | 18    |
| 16    | "      | 9     | 58    | "            | 19    |
| 17    | "      | 10    | 59    | "            | 20    |
| 18    | "      | 11    | 60    | "            | 22    |
| 19    | "      | 12    | 61    | "            | 23    |
| 20    | XXX.   | 6     | 62    | "            | 25    |
| 21    | II.    | 16    | 63    | —            | —     |
| 22    | "      | 17    | 64    | VIII.        | 26    |
| 23    | "      | 18    | 65    | "            | 27    |
| 24    | "      | 19    | 66    | XXXVII.      | 35    |
| 25    | "      | 20    | 67    | IX.          | 5     |
| 26    | "      | 21    | 68    | XX.          | 1     |
| 27    | "      | 24    | 69    | "            | 1     |
| 28    | "      | 25    | 70    | "            | 1     |
| 29    | "      | 26    | 71    | "            | 1     |
| 30    | "      | 22    | 72    | "            | 4     |
| 31    | "      | 23    | 73    | "            | 4     |
| 32    | "      | 28    | 74    | XII.         | 5     |
| 33    | "      | 29    | 75    | "            | 7     |
| 34    | "      | 30    | 76    | "            | 5     |
| 35    | "      | 31    | 77    | XIII.        | 1     |
| 36    | IV.    | 2     | 78    | "            | 2     |
| 37    | "      | 1     | 79    | "            | 3     |
| 38    | "      | 3     | 80    | "            | 6     |
| 39    | —      | —     | 81    | "            | 7     |
| 40    | —      | —     | 82    | "            | 8     |
| 41    | IV.    | 8     | 83    | —            | —     |
| 42    | —      | —     |       |              |       |

| Rule. | NEW.    |       | Rule. | NEW.    |       |
|-------|---------|-------|-------|---------|-------|
|       | Order.  | Rule. |       | Order.  | Rule. |
| 84    | XIV.    | 7     | 135   | XIX.    | 27    |
| 85    | XXXVII. | 22    | 136   | "       | 27    |
| 86    | "       | 23    | 137   | "       | 27    |
| 87    | —       | —     | 138   | XXXVI.  | 7     |
| 88    | IX.     | 7     | 139   | "       | 8     |
| 89    | "       | 8     | 140   | XVIII.  | 2     |
| 90    | "       | 9     | 141   | "       | 5     |
| 91    | "       | 10    | 142   | "       | 6     |
| 92    | "       | 11    | 143   | "       | 7     |
| 93    | "       | 12    | 144   | XIX.    | 32    |
| 94    | "       | 13    | 145   | XXIV.   | 1     |
| 95    | "       | 15    | 146   | "       | 2     |
| 96    | "       | 14    | 147   | "       | 3     |
| 97    | "       | 7     | 148   | "       | 4     |
| 98    | "       | 16    | 149   | "       | 5     |
| 99    | —       | —     | 150   | "       | 6     |
| 100   | XIV.    | 1     | 151   | XIX.    | 2     |
| 101   | "       | 2     | 152   | "       | 3     |
| 102   | "       | 9     | 153   | "       | 4     |
| 103   | "       | 5     | 154   | "       | 5     |
| 104   | XVI.    | 1     | 155   | —       | —     |
| 105   | "       | 2     | 156   | XIX.    | 10    |
| 106   | "       | 3     | 157   | "       | 12    |
| 107   | "       | 4     | 158   | "       | 14    |
| 108   | XXXVII. | 26    | 159   | "       | 16    |
| 109   | "       | 27    | 160   | "       | 17    |
| 110   | "       | 28    | 161   | "       | 18    |
| 111   | XVI.    | 5     | 162   | —       | —     |
| 112   | —       | —     | 163   | —       | —     |
| 113   | XVI.    | 7     | 164   | XIX.    | 23    |
| 114   | "       | 8     | 165   | "       | 24    |
| 115   | —       | —     | 166   | "       | 24    |
| 116   | XVI.    | 9     | 167   | "       | 24    |
| 117   | IX.     | 6     | 168   | —       | —     |
| 118   | XVI.    | 10    | 169   | XXVI.   | 1     |
| 119   | XVII.   | 3     | 170   | "       | 2     |
| 120   | "       | 4     | 171   | "       | 3     |
| 121   | "       | 5     | 172   | XXVIII. | 1     |
| 122   | "       | 6     | 173   | "       | 2     |
| 123   | "       | 7     | 174   | XXI.    | 1 & 2 |
| 124   | "       | 8     | 175   | "       | 3     |
| 125   | "       | 9     | 176   | "       | 4     |
| 126   | "       | 2     | 177   | "       | 5     |
| 127   | "       | 10    | 178   | "       | 6     |
| 128   | "       | 11    | 179   | "       | 7     |
| 129   | XXXVI.  | 11    | 180   | "       | 8     |
| 130   | "       | 3     | 181   | XXX.    | 1     |
| 131   | "       | 2     | 182   | "       | 2     |
| 132   | "       | 3     | 183   | "       | 3     |
| 133   | "       | 5     | 184   | "       | 4     |
| 134   | "       | 6     | 185   | "       | 5     |

| Rule. | NEW.    |       | Rule. | NEW.    |       |
|-------|---------|-------|-------|---------|-------|
|       | Order.  | Rule. |       | Order.  | Rule. |
| 186   | XXIX.   | 1     | 233   | XVIII.  | 8     |
| 187   | "       | 2     | 234   | XVI.    | 5     |
| 188   | "       | 3     | 235   | —       | —     |
| 189   | "       | 4     | 236   | —       | —     |
| 190   | "       | 4     | 237   | —       | —     |
| 191   | —       | —     | 238   | —       | —     |
| 192   | XXIX.   | 5     | 239   | —       | —     |
| 193   | "       | 8     | 240   | —       | —     |
| 194   | —       | —     | 241   | XVI.    | 11    |
| 195   | XXIX.   | 9     | 242   | "       | 11    |
| 196   | "       | 10    | 243   | "       | 11    |
| 197   | "       | 11    | 244   | "       | 11    |
| 198   | XV.     | 4     | 245   | "       | 11    |
| 199   | "       | 6     | 246   | "       | 11    |
| 200   | XIX.    | 33    | 247   | "       | 11    |
| 201   | XV.     | 5     | 248   | "       | 11    |
| 202   | "       | 7     | 249   | "       | 11    |
| 203   | "       | 8     | 250   | XII.    | 1     |
| 204   | XXV.    | 1     | 251   | "       | 1     |
| 205   | "       | 2     | 252   | "       | 1     |
| 206   | "       | 3     | 253   | XXXVII. | 24    |
| 207   | "       | 4     | 254   | XII.    | 2     |
| 208   | —       | —     | 255   | XXXVII. | 25    |
| 209   | XXV.    | 5     | 256   | —       | —     |
| 210   | "       | 6     | 257   | VII.    | 6     |
| 211   | "       | 7     | 258   | XVI.    | 3     |
| 212   | "       | 8     | 259   | XXII.   | 1     |
| 213   | "       | 9     | 260   | "       | 2     |
| 214   | "       | 10    | 261   | "       | 3     |
| 215   | "       | 11    | 262   | "       | 4     |
| 216   | "       | 12    | 263   | "       | 5     |
| 217   | XXXVII. | 33    | 264   | XXXVII. | 42    |
| 218   | "       | 34    | 265   | "       | 43    |
| 219   | "       | 36    | 266   | "       | 44    |
| 220   | VIII.   | 31    | 267   | "       | 45    |
| 221   | "       | 32    | 268   | "       | 50    |
| 222   | XXIII.  | 1     | 269   | XXXV.   | 1     |
| 223   | IV.     | 1     | 270   | "       | 1     |
| 224   | VIII.   | 7     | 271   | VIII.   | 33    |
| 225   | "       | 20    | 272   | XXXVII. | 47    |
| 226   | —       | —     | 273   | "       | 48    |
| 227   | IX.     | 4     | 274   | XVIII.  | 3     |
| 228   | "       | 4     | 275   | "       | 49    |
| 229   | XII.    | 2     | 276   | XL.     | —     |
| 230   | —       | —     | 277   | —       | —     |
| 231   | XVI.    | 3     | 278   | XXXVII. | 21    |
| 232   | —       | —     | 279   | —       | —     |



## EQUITY ORDERS AND RULES.

| OLD RULES. |        | NEW RULES. |       | OLD RULES. |        | NEW RULES. |       |
|------------|--------|------------|-------|------------|--------|------------|-------|
| Rule.      | Order. | Order.     | Rule. | Rule.      | Order. | Order.     | Rule. |
| 1          | I.     | IV.        | 1     | 11         | VI.    | XVIII.     | 27    |
| 2          | "      | "          | 3     | 12         | "      | "          | 28    |
| 3          | "      | VII.       | 1     | 13         | "      | "          | 29    |
| 4          | "      | "          | 4     | 14         | "      | "          | 34    |
| 5          | "      | —          | —     | 1          | VII.   | "          | 35    |
| 6          | "      | VII.       | 1     | 2          | "      | "          | 36    |
| 7          | "      | IV.        | 1     | 3          | "      | "          | 37    |
| 8          | "      | "          | 1     | 1          | VIII.  | "          | 30    |
| 9          | "      | VIII.      | 8     | 2          | "      | "          | 31    |
| 10         | "      | XXXVII.    | 42    | 3          | "      | "          | 32    |
| 1          | II.    | XII.       | 3     | 4          | "      | "          | 33    |
| 2          | "      | "          | 3     | 1          | IX.    | —          | —     |
| 3          | "      | "          | 2     | 1          | X.     | XV.        | 1&2   |
| 4          | "      | "          | 2     | 2          | "      | "          | 1&2   |
| 5          | "      | "          | 2     | 3          | "      | "          | 1&2   |
| 6          | "      | XXXVII.    | 23    | 1          | XI.    | XXXI.      | 15    |
| 1          | "      | XIV.       | 3     | 2          | "      | "          | 16    |
| 2          | III.   | XIII.      | 9     | 3          | "      | V.         | 6     |
| 3          | "      | "          | 5     | 4          | "      | XL         | 1     |
| 4          | "      | XIV.       | 1     | 5          | "      | XXXI.      | 1     |
| 5          | "      | "          | 4     | 6          | "      | "          | 2     |
| 6          | "      | "          | 5     | 7          | "      | "          | 3     |
| 7          | "      | "          | 6     | 8          | "      | "          | 4     |
| 8          | "      | "          | 9     | 9          | "      | "          | 5     |
| 9          | "      | "          | 8     | 10         | "      | "          | 6     |
| 10         | "      | "          | 8     | 11         | "      | "          | 7     |
| 11         | "      | "          | 3     | 12         | "      | "          | 8     |
| 1          | IV.    | XXXVI.     | —     | 13         | "      | "          | 9     |
| 2          | "      | —          | —     | 14         | "      | "          | 10    |
| 3          | "      | XIV.       | 10    | 15         | "      | "          | 11    |
| 4          | "      | —          | —     | 16         | "      | "          | 12    |
| 5          | "      | —          | —     | 17         | "      | "          | 13    |
| 6          | "      | —          | —     | 18         | "      | "          | 14    |
| 1          | V.     | XVIII.     | 1     | 19         | "      | "          | 16    |
| 2          | "      | "          | 13    | 20         | "      | "          | 17    |
| 3          | "      | —          | —     | 21         | "      | "          | 18    |
| 4          | "      | XVIII.     | 14    | 22         | "      | "          | 19    |
| 5          | "      | "          | 15    | 23         | "      | "          | 20    |
| 6          | "      | "          | 16    | 24         | "      | "          | 21    |
| 1          | VI.    | "          | 13    | 1          | XII.   | XI.        | 1     |
| 2          | "      | "          | 16    | 2          | "      | "          | 3     |
| 3          | "      | "          | 19    | 3          | "      | "          | 4     |
| 4          | "      | "          | 20    | 1          | XIII.  | —          | —     |
| 5          | "      | "          | 21    | 1          | XIV.   | XXXVII.    | 37    |
| 6          | "      | "          | 22    | 2          | "      | "          | 38    |
| 7          | "      | "          | 23    | 3          | "      | "          | 39    |
| 8          | "      | "          | 24    | 4          | "      | "          | 40    |
| 9          | "      | "          | 25    | 5          | "      | "          | 41    |
| 10         | "      | "          | 26    | 1          | XV.    | XXVIII.    | 1     |

| OLD RULES. |        | NEW RULES. |       | OLD RULES. |        | NEW RULES. |       |
|------------|--------|------------|-------|------------|--------|------------|-------|
| Rule.      | Order. | Order.     | Rule. | Rule.      | Order. | Order.     | Rule. |
| 1          | XVI.   | XIX.       | 28    | 1          | XXI.   | II.        | 32    |
| 2          | "      | "          | —     | 2          | "      | —          | —     |
| 3          | "      | "          | 1     | 3          | "      | II.        | 34    |
| 4          | "      | "          | 29    | 4          | "      | "          | 30    |
| 5          | "      | XI.        | 4     | 1          | XXII.  | III.       | 1     |
| 6          | "      | XIX.       | 30    | 2          | "      | "          | 2     |
| 7          | "      | "          | 31    | 3          | "      | "          | 3     |
| 1          | XVII.  | "          | —     | 4          | "      | "          | 4     |
| 2          | "      | XXVII.     | 1     | 5          | "      | "          | 5     |
| 3          | "      | "          | 2     | 6          | "      | "          | 6     |
| 4          | "      | "          | 3     | 7          | "      | "          | 7     |
| 5          | "      | "          | 4     | 1          | XXIII. | —          | —     |
| 6          | "      | "          | 5     | 2          | "      | XXXVII.    | 32    |
| 7          | "      | "          | 6     | 3          | "      | —          | —     |
| 8          | "      | "          | 7     | 4          | "      | XXXVII.    | 2     |
| 9          | "      | "          | 8     | 5          | "      | VIII.      | 5     |
| 1          | XVIII. | XX.        | 5     | 6          | "      | —          | —     |
| 2          | "      | "          | 1     | 7          | "      | —          | —     |
| 3          | "      | "          | 3     | 8          | "      | XXXVII.    | 31    |
| 4          | "      | —          | —     | 9          | "      | —          | —     |
| 1          | XIX.   | XXIX.      | 1     | 10         | "      | XXXVII.    | 3     |
| 2          | "      | "          | 3     | 11         | "      | "          | 8     |
| 3          | "      | "          | 4     | 12         | "      | "          | 9     |
| 4          | "      | "          | 5     | 13         | "      | "          | 11    |
| 5          | "      | "          | 6     | 14         | "      | "          | 12    |
| 6          | "      | "          | 7     | 15         | "      | "          | 13    |
| 7          | "      | "          | 8     | 16         | "      | "          | 14    |
| 8          | "      | —          | —     | 17         | "      | "          | 15    |
| 9          | "      | —          | 9     | 18         | "      | "          | 16    |
| 10         | "      | —          | —     | 19         | "      | V.         | 7     |
| 1          | XX.    | —          | —     | 20         | "      | XXXVII.    | 17    |
| 2          | "      | II.        | 3     | 21         | "      | XXXVI.     | 1     |
| 3          | "      | —          | 13    | 22         | "      | XXXVII.    | 18    |
| 4          | "      | XXXVII.    | 32    | 23         | "      | "          | 19    |
| 5          | "      | XVIII.     | 17    | 24         | "      | "          | 51    |
| 6          | "      | "          | 18    | 25         | "      | "          | 20    |
| 7          | "      | —          | —     | 26         | "      | "          | 21    |
| 8          | "      | —          | —     | 27         | "      | —          | —     |
| 9          | "      | II.        | 15    |            |        |            |       |
| 10         | "      | "          | 14    |            |        |            |       |

COMPANIES ACT, 1867, &amp;c.

See Order XXXIX.

## DEBTORS ACT, 1869.

*January, 1870.*

| Rule. | New.   |       | Rule. | New.   |       |
|-------|--------|-------|-------|--------|-------|
|       | Order. | Rule. |       | Order. | Rule. |
| 1     | XIX.   | 6     | 14    | XIX.   | 17    |
| 2     | "      | 7     | 15    | "      | 18    |
| 3     | —      | —     | 16    | "      | 22    |
| 4     | XIX.   | 8     | 17    | "      | 23    |
| 5     | "      | 9     | 18    | "      | 24    |
| 6     | —      | —     | 19    | "      | 25    |
| 7     | XIX.   | 10    | 20    | —      | —     |
| 8     | "      | 11    | 21    | XIX.   | 27    |
| 9     | "      | 12    | 22    | "      | "     |
| 10    | "      | 13    | 23    | "      | "     |
| 11    | "      | 14    | 24    | "      | 20    |
| 12    | "      | 15    | 25    | —      | —     |
| 13    | "      | 16    |       |        |       |

*May, 1870.*

|   |         |    |   |      |    |
|---|---------|----|---|------|----|
| 1 | —       | —  | 5 | XIX. | 19 |
| 2 | —       | —  | 6 | "    | 20 |
| 3 | XXXVII. | 7  | 7 | "    | 21 |
| 4 | XIX.    | 27 | 8 | —    | —  |

COUNTY COURT RULES, *May, 1870.*

|   |         |   |    |        |    |
|---|---------|---|----|--------|----|
| 1 | —       | — | 9  | —      | —  |
| 2 | IV.     | 3 | 10 | —      | —  |
| 3 | XXXVII. | 5 | 11 | —      | —  |
| 4 | "       | 6 | 12 | —      | —  |
| 5 | "       | 7 | 13 | XXXVI. | 10 |
| 6 | II.     | 5 | 14 | "      | 11 |
| 7 | "       | 6 | 15 | —      | —  |
| 8 | XII.    | 8 |    |        |    |

## ADMIRALTY RULES.

|    |         |   |    |         |       |
|----|---------|---|----|---------|-------|
| 1  | XXXIII. | 1 | 12 | XXXIII. | 10    |
| 2  | "       | 2 | 13 | "       | 11    |
| 3  | "       | 3 | 14 | "       | 12    |
| 4  | "       | 4 | 15 | "       | 13    |
| 5  | "       | 4 | 16 | "       | 14    |
| 6  | V.      | 1 | 17 | "       | 15    |
| 7  | I.      | 5 | 18 | "       | 16    |
| 8  | XXXIII. | 6 | 19 | XXX.    | 4 & 5 |
| 9  | "       | 7 | 20 | XXXIII. | 17    |
| 10 | "       | 8 | 21 | "       | 18    |
| 11 | "       | 9 | 22 | XIV.    | 1     |

| Rule. | New.    |       | Rule. | New.    |       |
|-------|---------|-------|-------|---------|-------|
|       | Order.  | Rule. |       | Order.  | Rule. |
| 23    | XXXVI.  | 3     | 51    | XXXIII. | 34    |
| 24    | "       | 4     | 52    | "       | 35    |
| 25    | XXXVII. | 37    | 53    | "       | 36    |
| 26    | "       | 38    | 54    | "       | 37    |
| 27    | "       | 39    | 55    | "       | 38    |
| 28    | "       | 39    | 56    | "       | 39    |
| 29    | —       | 41    | 57    | "       | 40    |
| 30    | —       | —     | 58    | "       | 41    |
| 31    | —       | —     | 59    | XXXVII. | 4     |
| 32    | —       | —     | 60    | "       | 32    |
| 33    | XXXVII. | 51    | 61    | —       | —     |
| 34    | XXXIII. | 19    | 62    | —       | —     |
| 35    | "       | 20    | 63    | —       | —     |
| 36    | "       | 21    | 64    | —       | —     |
| 37    | "       | 22    | 65    | —       | —     |
| 38    | —       | —     | 66    | —       | —     |
| 39    | XIX.    | 1     | 67    | —       | —     |
| 40    | XXXIII. | 23    | 68    | XXXVII. | 31    |
| 41    | "       | 24    | 69    | XXXIII. | 42    |
| 42    | "       | 25    | 70    | "       | 43    |
| 43    | "       | 26    | 71    | "       | 44    |
| 44    | "       | 27    | 72    | "       | 45    |
| 45    | "       | 28    | 73    | "       | 46    |
| 46    | "       | 29    | 74    | XXXVII. | 21    |
| 47    | "       | 30    | 75    | —       | —     |
| 48    | "       | 31    | 76    | —       | —     |
| 49    | "       | 32    | 77    | —       | —     |
| 50    | "       | 33    |       |         |       |

### THE COUNTY COURT RULES, 1875.

The orders, rules, and forms, now in use in the county courts, except in proceedings under the Bankruptcy Act, 1869, Charitable Trusts Acts, and the Probate Acts, shall, on and from the 2nd day of November, 1875, cease to be used, and in lieu thereof the following shall, on and from such day, be the orders, rules, and forms in force and used in the said courts.

#### *Short title.*

Short title. These orders may be cited as "The County Court Rules, 1875."

#### *Interpretation.*

Interpretation. In the construction of these rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females, and the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them, that is to say :

"Action" shall mean every proceeding commenced by plaint in a county court ;

- "Affidavit" shall include statutory declarations, affirmations, and attestations upon honour, and the word "sworn" shall include declaring and affirmed according to statute and attested upon honour;
- "Clear days" shall mean that all cases in which any particular number of days is prescribed for the doing any act, or for any other purpose, the same shall be reckoned exclusive both of the first and of the last day;
- "Court" shall mean the county court having jurisdiction in the action or matter;
- "Default summons" shall mean a summons other than a judgment summons, which is required by statute to be served personally;
- "Foreign court" shall mean the court of the district into which process is issued from another court;
- "Home court" shall mean the court from which process is originally issued;
- "Home district" shall mean the district of the home court; and "foreign district" shall mean the district of the foreign court;
- "Judge" shall mean the judge or deputy judge of any such court;
- "Matter" shall mean every proceeding commenced otherwise than by plaint, and whether in an action or not;
- "Month" shall mean calendar month.
- "Ordinary summons" shall mean a summons which is not required by statute to be served personally;
- "Party" shall mean party to any action or matter; or a person served with notice of, or in, any action or matter, and shall include body politic or corporate;
- "Registrar" shall mean a registrar or any deputy registrar of any such court;
- "Return-day" shall mean and include the day appointed by an ordinary summons for the appearance of the defendant, or any other day fixed for the trial of an action;
- "Treasurer" shall, where there is no treasurer of the court, mean the superintendent, for the time being, of the county court department of the Treasury;
- "Trial" shall mean any trial of the action or the hearing of any matter before the court. *See pp. 218, 344.*

## ORDER I.

## COURT AND OFFICES.

1. Every judge shall appoint the days and hours for holding his courts; and a notice of the day and hour on which each court will be holden shall, three calendar months before the holding thereof, be affixed in some conspicuous place in the court-house and in the registrar's office; and whenever any day or hour so appointed for holding the court shall be altered, notice of such alteration shall immediately be affixed in like manner; but any judge may from time to time hold additional and adjourned courts. *See p. 328.*

Sittings of  
court.  
9 & 10 Vict.  
c. 95, s. 56.

No two courts to be held on same day.

2. Two courts shall not be holden before the same judge on one day, unless with the consent of the lord chancellor; but this rule shall not apply to the holding of an adjourned court, or to the City of London Court. *See p. 329.*

On what days registrar to keep county court office open.

3. An office shall be kept open by the registrar at each place where the court of which he is registrar is holden, and such office shall be kept open every day from ten o'clock in the morning until four o'clock in the afternoon, except on Christmas-day, Good Friday, the Saturday next after Good Friday, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or any day appointed by royal proclamation for a public fast, humiliation, thanksgiving, or any day appointed for closing the same by the lord chancellor; provided that on Saturdays the office may be closed at one o'clock in the afternoon, but where Saturday is the market-day of the town in which the court is holden, the office shall not be so closed, but may be closed at one o'clock on some other day of the week instead of Saturday, which day shall be fixed upon for such purpose by the judge, and shall not afterwards be changed except by his leave: provided, that an office need not be kept open in more than one place within the district of a court, although the court is holden at more than one place within the district, unless the lord chancellor shall otherwise order: provided also, that during the days on which in such district the court is held in any place other than in the place where the registrar's office is situate, or on which an office is open at such other place, the office may be closed on such days in the place in which the office is required generally to be kept open. *See pp. 120, 218, 220, 332.*

County court office may be closed by order.

4. The offices of the county courts may from time to time be closed by special order of the lord chancellor on such days as may be mentioned in any such order. *See p. 332.*

## ORDER II.

### OFFICERS.

#### *Registrar.*

Deputy registrars. 9 & 10 Vict. c. 95, s. 26.

1. Whenever the registrar is absent from the sitting of a court, the judge shall appoint a deputy to act on behalf of the registrar; and an entry of such appointment and the cause of such absence (if known) shall be made on the minutes of the court. *See p. 331.*

Registrar to keep books. 9 & 10 Vict. c. 95, s. 27.

2. The registrar shall keep the books in the forms in the schedule; and every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which the entry relates. *See p. 332.*

Documents to be distinguished by the number of the plaint and letters.

3. The registrar shall file all documents delivered to him in any action or matter, and shall distinguish them by the number of the plaint in respect of which they are filed, and from each other, by a distinctive letter of the alphabet, and he shall enter in the "notice-book" the fact of the dispatch of all summonses to foreign courts, documents, notices, and letters

sent by him to any party, and all particulars required by the form of such book. *See p. 221.*

4. The registrar of the court shall issue all summonses and warrants forthwith after the complaints are entered or the warrants applied for. *See pp. 119, 223.* Registrar to issue all processes.

5. Where a summons is required to be served in a foreign district, the registrar shall transmit the same and a copy thereof to the bailiff of the foreign court within twenty-four hours after the plaint is entered, with a letter according to the form in the schedule, unless the home court shall order the summons in that particular case to be served by its bailiff; and where the summons is returned to the registrar by the bailiff of the foreign court, not served, the registrar shall forthwith give notice to the plaintiff of such non-service; but no letter need be transmitted from one metropolitan court to another. *See pp. 120, 121, 123.* Service of summons in foreign district.

6. Where by the endorsement on the copy of a summons made by a bailiff of a foreign court, it shall appear doubtful whether the service will be held sufficient, the registrar of the home court shall forthwith on receiving back such copy send to the plaintiff a notice according to the form in the schedule. *See p. 123.* Doubtful service in foreign district. Form 14.

7. The registrar shall in all cases where by these rules particulars are required, annex to the summons a copy of the plaintiff's particulars, sealed with the seal of the court; and shall also make and deliver to the bailiff a true copy of the summons. *See pp. 119, 122, 127, 256, 260, 262, 276.* Particulars to be annexed to summons.

8. Moneys to be paid into court under the order of the judge may be so paid, during office hours, on every day on which such office is open. *See pp. 188, 332.* Payment into court.

9. Searches may be made and the money to which suitors are entitled shall be paid out upon demand (in cash if required) on three days, at the least, in each week, such days to be fixed by the registrar from time to time, with the approbation of the judge, and to be printed or written on the plaint-note: provided that, for the purpose of enabling the registrar to furnish the list of balances in the ledgers according to the requirements of the Commissioners of Her Majesty's Treasury, no searches shall be made or money paid out of court during one week in each year, provided that due notice of such week shall have been affixed in some conspicuous place in the office of the registrar a month beforehand. *See pp. 146, 189, 332.* Searches. 1<sup>st</sup> & 20 Vict. c. 101, s. 45.

10. Whenever money is paid into or deposited in court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given. *See pp. 145, 188.* Acknowledgment of payments and deposits.

11. All the books of the court, including the bankers' book and cash-book, shall at all times be open to the inspection of the treasurer. *See p. 333.* Court books to be produced to treasurer.

12. No registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, and no partner or clerk of any such officer, shall, on account of suitors, No officer to act as agent to parties.



sign the ledger, or any other book, or receive money, or otherwise act as an agent for that purpose. *See p. 341.*

Notice of rejection of imperfect affidavits or documents. No form given. Where legacy or succession duty payable, it must be paid before execution of decree. *13. Where a registrar rejects an affidavit or other document, he shall give notice, according to the form in schedule, by post or otherwise, to the party offering the same for filing, of such rejection and of the reasons thereof. See pp. 159, 220.*

*14. Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty shall be payable to the revenue under the Acts relating to legacy or succession duty, it shall be the duty of the registrar, before making the payment, to require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof respectively. See p. 309.*

Custody of securities. 30 & 31 Vict. c. 142, s. 24. *15. The registrars shall comply with all regulations which may from time to time be made by the Commissioners of Her Majesty's Treasury for the safe custody of any securities deposited with them under section 24 of the County Courts Act, 1867. See p. 314.*

#### *High Bailiff.*

Absence of high bailiff at court. *16. Whenever the high bailiff does not attend any sitting of the court, he shall transmit to the registrar in writing the cause of his absence, who shall enter it on the minutes of the then or the next succeeding court. See p. 337.*

High bailiff to keep books. *17. The high bailiff shall keep books and make returns in the forms in the schedule. See p. 337.*

Attendance at office. *18. The high bailiff or bailiff of the court shall attend for the purpose of receiving processes or for the performance of other duties, at the office of the registrar once at least every day during the hours it is open; and shall compare and examine all processes delivered to him by the registrar, so as to enable him to prove its correctness. See p. 338.*

Keeping open an office. *19. The office of the high bailiff of a county court, in which the plaints entered shall have exceeded six thousand in any one year, shall be open to the public for the purpose of answering inquiries, giving information, or for any other purpose connected with the duties of the bailiff, during the same hours as the office of the registrar of the court is to be kept open. See p. 337.*

Service of process. *20. The high bailiff shall serve or cause to be served process issued out of his court of which he is high bailiff, or sent to him for service from other county courts, as soon as practicable. See p. 338.*

Indorsement of service on copy of summons. *21. If the service of the summons has been personal, the bailiff who served the same shall indorse on the copy of the summons delivered to him by the registrar the fact of such service; and if the service has not been personal, he shall indorse on the copy of the summons the statement which has been made by the person to whom the summons was delivered, or other circumstances from which it may be inferred that the service of the summons has come to the knowledge of the de-*

pendant; and if the summons has not been served, the bailiff shall indorse on such copy the reason of such non-service, and shall deliver it to the registrar with the list of summonses hereafter mentioned, and such copy shall be produced by the registrar or high bailiff, as the judge may require. All such endorsements shall be signed by the bailiff. *See p. 123.*

22. Where an ordinary home summons has not been served, the high bailiff shall forthwith give notice to the plaintiff of the fact of such non-service according to the form in the schedule. *See p. 123.*

Notice of non-service to be given. Form 13.

23. Where the answers given by the person to whom an ordinary summons is delivered at the place mentioned in a summons as the residence or place of business of the defendant render it doubtful whether the court will be satisfied that its service has come to the knowledge of the defendant before the return-day, the high bailiff shall forthwith send to the plaintiff a notice according to the form in the schedule. *See pp. 122, 123.*

Notice of doubtful service to be given. Form 14.

24. Where an ordinary summons to appear to a plaintiff is required to be served in a foreign district, the high bailiff of that district shall, eight clear days at least before the return-day, transmit the copy thereof to the registrar of the home court duly endorsed, and where it has not been served, he shall return the summons also. *See pp. 123, 346.*

Service by foreign bailiff.

25. Where the high bailiff of a foreign court neglects to return to the registrar of the home court the copy of a summons as required by the last-preceding rule, or of a judgment summons, three clear days before its return-day, the judge of the home court may, upon evidence of such summons having been posted to the high bailiff of the foreign court, direct such high bailiff to have notice that he will at a court to be mentioned, unless such high bailiff show cause to the contrary, make an order directing such high bailiff to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect, and if on the day mentioned the judge shall make any order for payment by such high bailiff, a memorandum of such order shall be made in the minute-book, and the registrar of the home court shall transmit to the high bailiff of the foreign court a notice according to the form in the schedule, and if he shall not remit to the registrar of the home court the sum directed by the order to be paid, the registrar shall transmit to the treasurer of the foreign court a copy of the notice, certifying thereon the neglect of the high bailiff to pay the money as required, and the treasurer shall deduct such sum from any payment he may thereafter make to the high bailiff. *See p. 346.*

Where return of service to home court is not made, foreign bailiff may be ordered to pay costs. Form 43.

26. Seven clear days before the day of holding any court the high bailiff shall deliver to the registrar a list of all ordinary summonses on plaintiffs before judgment, issued to him, returnable at such court, and shall state therein the mode of service or the cause of non-service of each summons, and the high bailiff shall, at the same time, unless the judge shall

High bailiff to deliver list of ordinary summonses served. 9 & 10 Vict. c. 95, s. 33.

otherwise order, deliver to the registrar the copy of every such summons which has been served, and the summons itself when not served. *See p. 123.*

Notice of service or non-service of default summonses. Form 18.

27. Within two days after the service of a default summons, the high bailiff of the court in the district of which it was to be served shall send notice thereof to the plaintiff according to the form in the schedule, and shall return the copy of the summons duly indorsed to the registrar of the court from which it issued, and where any such summons cannot be served within one month from the date of its issue, such high bailiff shall send to the plaintiff a notice stating why it has not been served, and shall send a similar notice at the end of every one month during which it shall remain in force and unserved. *See p. 128.*

Order-book.

28. The high bailiff shall enter in the order-book all orders for the payment of money or costs, or both, which he shall have received, and the date on which he shall have caused the same to be posted. *See p. 228.*

Warrants to be served. Entries in warrant-book, 9 & 10 Vict. c. 95, ss. 33 and 94.

29. The high bailiff shall execute every warrant issued to him, as soon as possible, and shall enter in the proper book every warrant which he has been required to execute, and shall state from time to time therein what he shall have done under each warrant, and if the same be not executed within one calendar month from the day of its delivery to him, why it has not been executed; and shall, at all reasonable times, give to a suitor, his solicitor or agent, every information that he may reasonably require as to the execution or non-execution of any warrant, which has been issued at his instance. *See p. 224.*

Moneys to be paid in within 24 hours.

30. Every high bailiff levying or receiving any money by virtue of any process issuing out of the court of which he is bailiff, shall, within twenty-four hours from the receipt thereof, pay over the same to the registrar of such court, who shall endorse upon the warrant a memorandum of having received the same, and the high bailiff shall file such process and retain the same in his custody. *See p. 230.*

Non-execution of warrant in foreign district. 9 & 10 Vict. c. 95, ss. 33 and 104.

31. Whenever a warrant required to be executed in a foreign district has not been executed within one calendar month from the day of its delivery, the high bailiff of the foreign court shall, on the day after the termination of such month, make a return to the registrar of the home court of what he shall have done under such warrant, and why it has not been executed, and when the same warrant has not been executed during the time it is in force such high bailiff shall return the same to the registrar of the home court within twenty-four hours from the expiration of such time, and shall indorse on such warrant the reason why the same could not be executed, and he shall sign such indorsement, but the high bailiff shall return such warrant to the home court at any time, although unexecuted, if he shall be directed so to do by the registrar of the home court, or shall give such information as such registrar may require in the matter of the warrant. *See p. 229.*

As to sale of personal property.

32. Where any personal property is directed to be sold by auction, detained, or preserved, the high bailiff shall, if the

court so direct, superintend such sale, detention, or preservation; and where the property is to be sold by private contract, he shall carry out the directions of the court in respect of such sale, but this rule shall not apply to an execution issued under section 95 of the County Courts Act, 1846. *See pp. 166, 302, 338.*

33. Where a warrant shall direct the high bailiff to detain and preserve any goods or chattels, he shall take and retain possession thereof until further order be made by the court thereon. *See p. 338.* Possession.

34. Where a warrant shall direct the high bailiff to take possession of any goods or chattels until good security be given by some party for the safe keeping, or for the payment of the value of the same in default of such safe keeping, but shall not specify the amount of such security, he shall make or cause to be made an inventory or appraisement of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisement or sufficient security, to be approved by the registrar, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be redelivered to him or held to abide the order of the court. If the warrant shall specify the amount of security, no less deposit or security shall be sufficient. *See pp. 307, 339.* Where possession taken until security given.

### ORDER III.

#### RECEIVER.

1. Every receiver appointed by the court, other than the high bailiff, shall give such security to the registrar for the faithful discharge of his duties, and the payment over of money, as the court shall direct. *See p. 168.* Receiver. Form 213.

2. The receiver shall submit his accounts to the registrar, and the registrar shall audit the same, as soon as conveniently may be after the receipt or realisation of the assets, and immediately after such audit the receiver shall pay over to the registrar the balance found thereby to be in his hands. The account shall be written on foolscap paper bookwise, and the items of every account must be numbered consecutively, and the account must be verified by affidavit and be therein referred to as an exhibit. *See p. 168.* Audit of receiver's accounts.

3. The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the accounts, and may disallow any item not proved to his satisfaction. *See p. 168.* Receiver to produce vouchers.

4. The receiver shall, at any time before the complete realisation of the assets, produce his accounts to be audited upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver. *See p. 168.* Accounts to be audited.

5. Where the duties of the receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit. *See p. 168.* Interval between audits.

Attendance of party not required at audit. 6. In no case shall it be necessary for any party to attend at the audit of the receiver's account, but where a party is dissatisfied with a receiver's account he may apply to the judge or registrar for a revision of the registrar's allowances. *See p. 168.*

Court may direct receiver to pay party moneys received. 7. The court may order the receiver to pay over, at such time or from time to time as it shall see fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest instead of paying the same into court, and to take credit for such payments in his accounts when audited. *See p. 168.*

### ORDER IV.

#### COMMENCEMENT OF ACTION.

Actions to be commenced by plaintiff. 1. All actions, suits, and proceedings in a county court which prior to 2nd November, 1875, were required by statute or otherwise to be commenced by entry of a plaint, shall henceforth be called actions, and shall be commenced by entering a plaint and issuing a summons in manner prescribed by the County Courts Act, 1846, and these rules. *See pp. 113, 300.*

Forms 6 and 7. Security for costs. 2. Where it shall appear, on an application for the entry of a plaint, that the plaintiff does not reside in England or Wales, the summons shall not be issued until security for costs, by deposit of money or otherwise, shall have been given to the satisfaction of the registrar: provided that where the plaint is entered through a solicitor, an undertaking, according to the form in the schedule, to be responsible for the costs shall be sufficient. *See p. 114.*

Form 44. Names, description, and address of plaintiff and defendant to be given on entry of plaint. Forms 6 and 7. 3. No plaint shall be entered unless the plaintiff shall give the christian-name and surname, description, and residence, or place of business of himself, and of the solicitor, if any, entering the plaint, and the surname (and where known, the christian-name) and description, and, except as provided in the next following rule, the residence or place of business of the defendant (and, where known, the name of the street and number of such house or place of business), and the descriptions and addresses so given shall be inserted in such process or attached thereto. *See pp. 113, 114.*

Where plaint is entered by leave, defendant's residence need not be given, but summons must be served personally. 4. Where a plaintiff applies to enter a plaint by leave of the judge or registrar in the county court within the district of which the defendant or one of the defendants dwelt or carried on business within six months next before the time of action brought, or in the county court in the district of which the cause of action wholly or in part arose, a summons may be issued, although the plaintiff cannot give the present place of residence or of business of the defendant; but in such case the defendant must be served personally, either within the district of the home court, or wherever else he may be met with. *See p. 114.*

Summons under 5. Where under section 1 of the County Courts Act, 1875, the leave of the judge or registrar is required for the issue of

a summons in the form or to the effect given in schedule B in that Act, such leave may be given in all cases except where the affidavit (*given in schedule A to the said Act*) discloses that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered, or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling. *See p. 126.*

38 & 39 Vict.  
c. 50, s. 1,  
not to issue  
in certain  
cases.  
See Form  
15.

6. Where a plaint is entered by a solicitor and he requires a default summons to issue, he may, at the time of the entry of the plaint, deliver to the registrar a notice in writing (*according to the form in the schedule*) signed by himself, stating that he wishes to serve the summons by himself or some clerk or servant in his permanent and exclusive employ, and it shall be so served accordingly; but if such notice be not given the summons shall be served by a bailiff of a county court: provided that where difficulty has been experienced in effecting service under this rule, the summons may be served by leave of the judge or registrar by the party or by some clerk or servant in his permanent and exclusive employ. *See p. 127.*

Default  
summons  
may be  
served by  
solicitor.  
No form is  
given.

7. Where any such summons has been served by the solicitor or his clerk or servant as aforesaid, a copy of such summons, together with an affidavit of the service thereof (*in the form given in the schedule*) shall within three clear days next thereafter be delivered or transmitted to the registrar of the court issuing such summons, who shall forthwith file the same. *See p. 128.*

Copy of  
default  
summons  
and affidavit  
to be de-  
livered to  
registrar.  
No form is  
given.

8. Where a plaintiff requiring a default summons does not require the order upon the judgment to be for payment forthwith, he shall, at the time of the entry of the plaint, file a notice, signed by himself or his solicitor or agent, of the time or times at which, and of the instalments, if any, by which, he consents to accept payment, together with as many copies of such notice as there are defendants; and a copy of such notice shall be annexed to the summons, and served therewith; and if he neglects to file such notice, he may give such notice at the time of entering up judgment. *See p. 126.*

Practice  
where  
plaintiff  
does not  
require  
payment  
forthwith.  
Form 36.

9. Where an infant desires to commence an action (other than for wages or piece-work, or for work as a servant), he shall procure the attendance of a next friend, at the office of the registrar, at the time of entering the plaint; and no plaint shall be entered until the next friend has undertaken, according to the form in the schedule, to be responsible for costs, who, on entering into such undertaking, shall be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary action; and the action shall proceed in the name of the infant by such next friend, and the undertaking shall be filed by the registrar; but no order of the court shall be necessary for the appointment of such next friend. If the plaintiff fail in, or discontinue his action, and do not pay the amount of costs awarded by the court to be paid by him to the defendant, proceedings may be taken for the recovery of

Infant  
suing.  
  
  
  
Form 42.



such amount from the next friend as for the recovery of any debt ordered to be paid by the court. *See p. 99.*

Married woman suing.

10. Where a plaint is entered by a married woman, she shall state name, and, so far as she can, the address and description of her husband; and shall, unless the court shall otherwise order, also procure the attendance of a next friend, who shall give the undertaking and incur all the liability in the last preceding rule provided in the case of an infant plaintiff. *See p. 106.*

## ORDER V.

### PARTIES.

All persons may be joined as plaintiffs in whom any right exists jointly, severally, or in the alternative.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the court, in disposing of the costs of the action, shall otherwise direct. *See p. 91.*

All persons may similarly be joined as defendants.

2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment. *See p. 91.*

All persons so joined need not be interested in all the relief prayed for.

3. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest. *See p. 92.*

Persons may be joined as parties who are liable under any one contract

4. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. *See p. 92.*

Where plaintiff in doubt as to whom he is entitled to redress.

5. Where, in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action. *See p. 93.*

Trustees, executors, and others may sue or be sued without joining parties beneficially interested.

6. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the court may, at the trial, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously-existing parties thereto. *See p. 98.*



7. Married women and infants may respectively sue as plaintiffs by their next friends, and infants may defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the registrar, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the registrar may require. *See pp. 99, 106.*

Married women and infants.

8. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the judge to defend in such action, on behalf or for the benefit of all parties so interested. Any application under this rule may be made to the judge either at trial or in chambers under section 4 of the County Courts Act, 1875. *See pp. 91, 92.*

Where parties numerous, one or more may sue or be sued or defend for the benefit of all.

9. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and on application by any party to an action in such case the registrar may order a statement of the names of the persons who are co-partners in any such firm to be furnished in such manner, and verified on oath or otherwise, as the registrar may direct: provided that where an action is brought against a firm and the plaintiff desires to obtain judgment against each member of the firm, he shall state the names of the persons whom he believes are co-partners in such firm, and file an affidavit and copy thereof setting forth the grounds of his belief, and the registrar shall thereupon attach to the summons a copy of such affidavit, together with a notice, according to the form in the schedule, that if sufficient cause be not shown at the trial the judge will order judgment against all the persons whose names have been so given and verified; and the judge may at the trial give judgment, if he thinks fit, against all the persons whose names have been inserted in such notice, and who shall have been served with the summons, with a copy of the affidavit, and notice annexed in the manner and within the time in which an ordinary summons should be served. *See pp. 97, 98.*

Co-partners may sue and be sued in the name of their firm (and see order xi., rule 9).  
Provide as to judgment against members of firm.

Form 63.

10. Where the action is brought under section 11 of the County Courts Act, 1867, to recover any lands all the persons in whom the title is alleged to be shall be plaintiffs, and the person or persons alleged to be in possession or apparent possession of the lands sought to be recovered shall be defendant or defendants. *See p. 276.*

Parties in action to recover land.  
30 & 31 Vict. c. 142.

11. Subject to the provisions of these rules, the provisions as to parties, contained in section 42 of 15 & 16 Vict. c. 86, shall be in force as to actions in the county courts. *See p. 96.*

Provisions of sect. 42 of 15 & 16 Vict. c. 86, in force.

## ORDER VI.

### JOINDER OF CAUSES OF ACTION.

1. No cause of action shall, unless by leave of the judge, be joined with an action for the recovery of land, except claims in respect of mesne profits, or arrears of rent in respect of the premises claimed, or any part thereof, or damages for

What claims may be joined with action for recovery of land.

breach of any contract under which the same or any part thereof are held. *See p. 21.*

Joinder of claims by trustee in bankruptcy.

2. Claims by a trustee in bankruptcy as such shall not, unless by leave of the judge, be joined with any claim by him in any other capacity. *See p. 21.*

Joinder of causes of action generally.

3. Subject to the two preceding rules, a plaintiff may unite in the same action several causes of action, without leave of the court. *See p. 21.*

Claims by husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately. *See p. 106.*

Claims by executor or administrator.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. *See p. 21.*

Joint and separate claims by plaintiffs.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. *See p. 21.*

Separate trials may be ordered.

7. If at any time it appears or is made to appear to the court that the causes of action united or claims joined in any action cannot be conveniently tried and disposed of together, it may order separate trials, or may exclude any such cause of action or claim, and may order the particulars to be amended accordingly, and may make such order as to costs as may be just. *See p. 21.*

Actions by and against lunatics and persons of unsound mind.

8. In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the 1st November, 1875, have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose. *See p. 100.*

## ORDER VII.

### PARTICULARS AND STATEMENT OF CLAIM.

Particulars in cases above 40s. to be filed.

1. A plaintiff shall in all cases at the time of the entry of the plaint, file particulars of his demand or cause of action; and where the demand exceeds 50l., but the plaintiff desires to abandon the excess or to admit a set-off, and sues in a county court for the residue, the abandonment of the excess or the admission of the set-off shall be entered at the end of the particulars: provided that this rule shall not apply where the sum is sought to be recovered by ordinary summons and shall not exceed 40s. *See pp. 15, 19, 115, 116, 127.*

*See Form 46a.*

Particulars in cases of account.

2. In all cases of ordinary account, such as partnership, executorship, or ordinary trust accounts, where the plaintiff in the first instance desires to have an account taken, the par-

particulars shall contain a claim that such account be taken.  
*See pp. 116, 300.*

3. In all cases where the assignee of any debt or other legal *Particulars*  
*chase in action* sues, he shall state on his particulars the name where  
 and description of the assignor. *See p. 116.* assignee  
 suing.

4. The solicitor of a plaintiff suing by a solicitor shall indorse *Entry of*  
 on the particulars his name, or firm, and place of business, and *plaint by a*  
 shall state thereon whether he will accept service of proceed- *solicitor.*  
 ings in the action or matter on behalf of the plaintiff. *See*  
*pp. 112, 115.*

5. Where the action is brought under section 11 of the *Particulars*  
 County Courts Act, 1867, to recover any lands, the plaintiff in action  
 shall, at the time of entering the plaint, file a statement in under 30 &  
 writing containing a full description of the property sought to 31 Vict. c.  
 be recovered and of the annual value thereof, and of the rent, 142, s. 11.  
 if there be any, fixed or paid in respect thereof. *See p. 276.*

6. Where an action is brought under section 12 of the County *Particulars*  
 Courts Act, 1875, other than actions to recover possession of in actions  
 lands, whatever the amount of damages claimed may be, the under 30 &  
 plaintiff shall, at the time of the entry of the plaint, file a 31 Vict. c.  
 concise statement in writing, signed by himself or his solicitor, 142, s. 12.  
 of his cause of action, and of the particulars thereof. *See*  
*p. 285.*

7. Where the plaintiff seeks to obtain payment or satisfac- *Particulars*  
 tion, or relief, redress, or remedy upon more than one cause of where more  
 action or claim, he shall state in his particulars the grounds of than one  
 each claim separately, and shall also state separately the pay- cause of  
 ment or satisfaction, relief, redress, or remedy he claims in action.  
 respect of each. *See pp. 22, 116.*

8. In all actions the defendant may within three clear days *Notice of*  
 of his being served with the summons give notice to the plain- further par-  
 tiff that he requires further particulars, and the plaintiff shall, ticulars may  
 within two clear days of such service, file full particulars of be given.  
 his claim and of the relief or remedy to which he claims to be Practice  
 entitled, and within the same time shall deliver to the defen- where such  
 dant a copy thereof. Such particulars shall be written on notice is  
 paper of the description heretofore used in suits in equity, and given.  
 shall state as concisely as may be the material facts on which  
 the plaintiff relies, and shall be divided into paragraphs num-  
 bered consecutively, and each paragraph containing as nearly  
 as may be a separate allegation. Dates, sums, and numbers  
 shall be expressed in figures and not in words. The court, in  
 adjusting the costs of the action, shall inquire at the instance  
 of any party into any prolixity, and shall order the costs occa-  
 sioned by such prolixity to be borne by the party chargeable  
 with the same. *See p. 116.*

9. Where the amount claimed in any case includes a frac- *Fraction of*  
 tion of a penny, such fraction shall not be entered in the books a penny.  
 of the court, and judgment shall not be given for any fraction  
 of a penny. *See p. 186.*

## ORDER VIII.

## PLAINT-NOTE AND SUMMONS.

**Plaint-note.** 1. At the time of entering the plaint the registrar shall give to the plaintiff or his solicitor or agent a note under the seal of the court, according to the form in the schedule; and no money shall be paid out of court to the plaintiff or his solicitor or agent, unless on production of such note or a duplicate note as hereafter provided, provided that in the event of such note being lost or destroyed, a duplicate thereof may be given from time to time to the plaintiff, or his agent duly authorised in that behalf, upon proof by affidavit or otherwise, to the satisfaction of the registrar, that the person applying is the plaintiff, or his agent authorised in that behalf, and that he is entitled to the moneys payable in the action. *See pp. 114, 189.*

*Summons on Plaint.*

**Date of summons.** 2. Summonses to appear to a plaint shall be according to the forms in the schedule, and shall be dated on the day on which the plaint was entered, and the date thereof shall be the commencement of the action. *See p. 119.*

**Where issued by leave of judge or registrar.** 3. Where a summons is issued by leave of the judge or registrar, the words "by leave of the judge" or "by leave of the registrar," as the case may be, shall appear on the face of the summons. *See p. 119.*

**Particulars to be deemed part of summons.** 4. In all cases the particulars where required to be filed shall be annexed to the summons before service, and shall be deemed to be part thereof. *See pp. 115, 119.*

*Ordinary Summons and Service.*

**Ordinary summons, when returnable.** 5. An ordinary summons may be returnable either at the court for which plaints are then being entered, or at the request of the plaintiff at any subsequent court. *See p. 119.*

**Successive summonses.** 6. Where an ordinary summons has not been served, successive summonses may be issued without entering a new plaint, unless the non-service has been caused by the fact of the defendant's having removed from the address given before the entry of the plaint, or of the plaintiff having given a wrong or insufficient address; but if the bailiff shall ascertain that the defendant has removed to some other place within the district of the court, he shall serve the summons at such other place, indorsing on the copy thereof the new address; and the successive summons or summonses shall bear the same date and number as the summons first issued, which date and number shall be written in red ink in the "plaint-book," and such summonses shall be a continuance of the first summons: provided that no successive summons shall be issued on a plaint after three months from the date of entry, save as is provided in the next following rule. *See p. 125.*

**Delivery and service of summons in action** 7. The summons in an action brought under section 11 of the County Courts Act, 1867, to recover lands shall be delivered to the bailiff forty\* clear days at least before the return-day,

\* It is necessary to give this time to enable a defendant to avail himself of section 12 of 30 & 31 Vict. c. 142.

and shall be served thirty-five clear days before the return-day thereof. *See p. 276.*

8. An ordinary summons to appear to a plaint (except in actions as aforesaid to recover lands), where it is to be served in the home district, should, in order to ensure its service, be delivered to the bailiff at least twelve clear days, and where it is to be served in a foreign district fifteen clear days before the return-day, but it shall, in either case, be served at least ten clear days before the return-day thereof: provided that a summons may be issued at any time before the return-day, on production by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the ordinary jurisdiction of the court or of that of the court in which he then resides; and service of such summons at any time before the return-day may be deemed good service, if at the hearing, the judge is satisfied on the evidence on oath before him that such party was about to remove out of the ordinary jurisdiction of the court; but in every such case, whether such proof be given or not, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing. *See p. 120.*

under 30 & 31 Vict. c. 142, s. 11.

When ordinary summons is to be delivered for service. 9 & 10 Vict. c. 95, s. 59.

Time of service.

9. The service of an ordinary summons, except in the cases hereinafter specially provided for, may be either personal, or by delivering the same to some person, apparently not less than sixteen years old, at the house or place of dwelling, or place of business, of the defendant, unless the bailiff shall ascertain that the defendant has removed to some other place within the district, in which case he shall serve the summons at such last-mentioned place. No place of business shall be deemed the place of business of the defendant unless he shall be the master or one of the masters thereof. *See p. 121.*

Mode of service.

10. When an infant is a defendant to the action, service on his or her father or guardian, or if none then upon the person with whom the infant resides, or under whose care he or she is, shall, unless the judge or registrar otherwise orders, be deemed good service on the infant: provided that the judge or registrar may order that service made or to be made on the infant shall be deemed good service. *See p. 121.*

Service on infant.

11. When a person of unsound mind is a defendant to the action, service on his committee, if he has one, or if not then on the person with whom such person resides, or under whose care he or she is, shall, unless the court otherwise orders, be deemed good service on such defendant. *See p. 121.*

Service on a lunatic.

12. Where partners are sued in the name of their firm, the summons shall be served either upon any one or more of the partners, or at the principal place of the business in England of the partnership upon any person having apparently at the time of service the control or management of the partnership business there, and such service shall be deemed good service on the firm. *See p. 121.*

Service on partners.

13. Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel. *See p. 121.*

Service where defendant on board ship.

Service on  
a soldier.

14. Where a defendant is residing or quartered in any barracks, and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or serjeant of the company or troop to which such soldier or marine belongs. *See p. 122.*

Service on  
a prisoner.

15. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof. *See p. 122.*

Service on  
a miner.

16. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works, to the engine-man, banksman, or other person apparently in charge of the mine or works. *See p. 122.*

Service  
where  
defendant  
employed in  
a public  
asylum or  
prison.

17. Where the defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper, of the asylum, gaol, or house of correction. *See p. 122.*

Service on a  
corporation.

18. Service of the summons may be effected on a railway company or other corporation by delivering the summons to a secretary, station-master, or clerk of the defendant, at any station or office of the defendant within the district of the court in which the summons is to be served. *See p. 122.*

Where  
defendant  
keeps his  
house  
closed.

19. Where a defendant keeps his house or place of dwelling or place of business closed, in order to prevent a bailiff from serving the summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business. *See p. 122.*

Service in  
case of  
vacant  
possession.

20. Where the action is to recover any lands or tenements, the summons may, in case of vacant possession, or if the defendant cannot be found, and his place of abode shall not be known, or admission thereto cannot be obtained for serving the summons, be served by posting a copy of such summons upon the door of the dwelling-house or other conspicuous part of the property, and such affixing shall be deemed good service on the defendant. *See p. 276.*

Service  
where  
violence  
threatened.

21. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person or persons in concert with him, from personally serving such summons, it shall be sufficient service to leave such summons as near to the defendant as practicable. *See p. 122.*

Where  
service has  
not been  
personal.

22. Where the summons, though not served personally, has been delivered at the house or place of dwelling or place of business of defendant, and the defendant does not appear, in person or by his solicitor or agent, at the return-day, the action may proceed if the court is satisfied, on the evidence before it, that the service of such summons has come to the knowledge of the defendant before the return-day, but no such evidence shall be necessary in the cases specially mentioned in the rules numbered 17, 18, 19, 20, and 21 in this order. *See p. 124.*



23. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, the summons may be served in the manner so provided. *See p. 121.*

Service of summons in pursuance of statute.

24. Whenever a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the return-day, the action may, at the discretion of the court, proceed or be adjourned, whether the defendant appears or not on such return-day. *See p. 124.*

Where summons has come to the knowledge of defendant less than ten days before return-day.

25. Where a summons shall issue under section 18 of the County Courts Act, 1856, the same shall be served by the bailiff of the district within which the defendant shall dwell or carry on business, unless the judge shall in each case otherwise specially order: provided that this rule shall not interfere with the general power now vested in the bailiff of the court from which the summons has issued, to serve the same within five hundred yards of the boundary of his district. *See p. 121.*

Where summons issues under s. 18 of 19 & 20 Vict. c. 108.

26. The above rules as to the mode, but not those as to the time, of service of summonses to appear to a plaint, shall apply to the mode of service of all summonses whatsoever, except where otherwise directed by statute or by these rules. *See p. 124.*

Service of summonses other than on entry of plaint.

#### *Default Summonses and Service.*

27. Default summonses must be personally served within a period of six months of their date. *See p. 127.*

Service of default summonses.

28. A default summons may be served in any district in which the defendant may be met with. *See p. 127.*

Default summonses may be served in any district.

29. Where a default summons has not been returned to the registrar within six months from the date of its issue, unless the time for its service has been extended, it shall be struck out of the plaint-book. *See p. 127.*

When default summons may be struck out.

30. Where a husband and a wife living together are both defendants to an action, in cases where personal service is required such service on the husband shall be deemed good service on the wife, but the judge or registrar may order that the wife shall be personally served as well as the husband. *See p. 127.*

Where husband and wife are joined.

31. Where service of a default summons has been effected, and no notice of intention to defend been given, judgment shall not be signed after two months from the date of service; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of six months, apply to the registrar, and if he is satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may issue a successive summons without fee for a further period of six months, and so from time to time during the currency of the successive summons, and such successive summonses shall be a continuance of the

Limitation of time for signing judgment on default summons.



action on and from the day on which the plaint was entered.  
*See pp. 125, 128, 129.*

**Where either party dies after service of summons to save statute.** 32. Where a default summons has been served in due time to prevent the operation of a Statute of Limitations, and either party dies after the service and after the lapse of the period within which it is provided that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of service of the summons. *See p. 128.*

**Substituted service of summons under 18 & 19 Vict. c. 67.** 33. The provision of section 1 of the County Courts Act, 1875, as to where personal service cannot be effected, shall apply to the failure of service of a summons issued under the Bills of Exchange Act, 1855. *See p. 266.*

## ORDER IX.

### SPECIAL DEFENCES.

**Where plaintiff sues on behalf of others.** 1. Where a plaintiff sues on behalf or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against either or any of such persons if they or he had been plaintiff. *See p. 91.*

**Where defendant desires to defend on behalf of others.** 2. Where a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall, within two clear days of the date of service of the summons on him, apply to the registrar for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons, and the registrar may thereupon make an order for the defendant so to defend, and shall add the names to that of the defendant in the plaint or minute book, and a copy of such order shall be personally served on each of such persons and notice sent the plaintiff according to the form in the schedule: provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may, if he think fit, strike the name of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he shall think fit. *See p. 92.*

**Form 64.**

**In actions under 30 & 31 Vict. c. 142, s. 11, any person not named as a defendant may by leave appear.** 3. In actions brought under section 11 of the County Courts Act, 1867, to recover lands, any person not named as a defendant in the summons shall by leave of the registrar be allowed to appear and defend on filing twelve clear days before the return-day an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession either by himself or his tenant of the property or some part thereof mentioned in the particulars (such part being described in the affidavit with reasonable certainty), and upon such affidavit being filed, the registrar shall enter the name, address, and description of the person filing the same in the plaint-book as a defendant in addition

**Form 155.**

to the name or names of the person or persons originally made defendant or defendants; and shall ten clear days before the return-day give notice, by post or otherwise, to the plaintiffs and the original defendants, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit. *See p. 277.*

4. In actions brought under section 11 of the County Courts Act, 1867, to recover lands, any defendant may twelve clear days before the return-day file a notice in writing signed by himself or his solicitor to the registrar, that he intends to limit his defence to a part only of the property mentioned in the particulars describing that part in such notice with reasonable certainty, and the registrar shall ten clear days before the return-day send the same by post to the plaintiff or plaintiffs. *See p. 277.*

In actions under 30 & 31 Vict. c. 112, s. 11, defendant may give notice that he will limit his defence to part of the property. Form 156.

5. A defendant intending to avail himself of the power given by section 39 of the County Courts Act, 1856, to object to an action being tried in the county court, shall give notice personally or by post of such intention to the registrar and to the plaintiff five clear days before the return-day, according to the form set forth in the schedule; and shall therein name the parties whom he proposes to be his sureties, or state therein his willingness to deposit money in lieu of giving security, and if he shall fail to give such security or make such deposit before the return-day, or shall fail to give such notice of his intention to object as aforesaid, he shall not be entitled to object to the action being tried in the county court. *See p. 138.*

Objection to jurisdiction of court. 19 & 20 Vict. c. 108, s. 39. Form 76.

6. Where a plaintiff avails himself of the provisions of section 68 of the County Courts Act, 1846, and proceeds against only one or more of several persons jointly answerable, the defendant or defendants sued may avail himself or themselves of any defence or counter-claim to which he or they would be entitled if all the persons liable were made defendants. *See p. 93.*

Form 77.

Where one of several persons jointly answerable is sued. 9 & 10 Vict. c. 95, s. 68.

7. Where the defendant intends to rely upon any of the grounds of defence hereinafter mentioned in this order, he shall file a notice stating thereon his name and address, together with a concise statement of such grounds, five clear days before the return-day of the summons; and the registrar shall thereupon, within twenty-four hours after receiving the same, transmit by post one copy of such notice and particulars to the plaintiff: provided that in case of non-compliance with these rules, and of the plaintiff's not consenting at the trial to permit the defendant to avail himself of such defence at the trial, the judge may, on such terms as he shall think fit, adjourn the trial of the action to enable the defendant to give such notice. *See pp. 140, 141.*

Notice to be given of special defences. 9 & 10 Vict. c. 95, s. 70. Forms 59 and 60.

8. Where the defendant intends to rely upon a set-off of any debt or liquidated money demand, his statement shall contain particulars of the account upon which he claims the set-off to be due. *See p. 141.*

Set-off. Form 59.

Infancy.  
9 & 10 Vict.  
c. 95, s. 76.  
Form 60.

9. Where a defendant intends to rely on the defence of infancy, he shall in his statement set forth, so far as he is able, the place and date of his birth. *See p. 141.*

Coverture.  
9 & 10 Vict.  
c. 95, s. 76.  
Form 60.

10. Where a female defendant intends to rely on the defence of coverture, she shall in her statement set forth, so far as she is able, the place and date of marriage, together with the christian-name and surname of her husband, and his address and description so far as known. *See p. 141.*

Statute of  
Limitations.  
Form 60.

11. Where a defendant intends to rely on the defence of any Statute of Limitations, he shall in his statement state the date from which he relies that the statute began to run. *See p. 142.*

Bank-  
ruptcy.  
9 & 10 Vict.  
c. 95, s. 76.  
Form 60.

12. Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, or for the relief of insolvent debtors, he shall in his statement set forth the date of his certificate, discharge, or final order, and the court by which such certificate, discharge, or final order was granted or made. *See p. 142.*

Defence  
that libel or  
slander is  
true.  
30 & 31 Vict.  
c. 142, s. 10.  
Form 60.

13. Where in any action for libel or slander the defendant relies as a defence upon the fact that the libel or slander is true, he shall in his statement set forth that the libel or slander complained of is true in substance. *See pp. 142, 260.*

Statutory  
defence.

14. When in any action of tort the defendant relies upon a statutory defence, he shall in his statement set forth the year, chapter, and section of the statute on which he relies, or the short title thereof. *See p. 143.*

Equitable  
relief.

15. Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief upon any equitable ground against the claim of the plaintiff, or any part thereof, he shall five clear days before the return-day file a concise statement of the estate or right he so claims, and shall show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence. *See p. 142.*

Tender.

16. Where the defence is a tender, such defence shall not be available unless, before or at the trial of the action, the defendant pays into court (which may be without costs) the amount alleged to have been tendered. *See p. 144.*

## ORDER X.

### COUNTER CLAIM AND OTHER CLAIMS BY DEFENDANT.

Notice of  
counter-  
claim or  
claim to  
contribu-  
tion, in-  
demnity, &c.  
to be given.

1. Where a defendant in an action sets off, or sets up, by way of counter claim against the claims of the plaintiff, any right or claim, whether such set-off or counter claim sound in damages or not, and where a defendant is or claims to be entitled to contribution, indemnity, or other remedy or relief over against any other person, the defendant shall seven clear days before the return-day file a concise statement of his counter or other claim, containing the grounds upon which he makes the same, and where the person against whom he makes the claim is not the plaintiff, such person's name,

address, and description; and the registrar shall thereupon make out and cause to be forthwith served by the bailiff or the defendant's solicitor upon the plaintiff and the person against whom such claim is made a notice according to the form in the schedule, with a copy of the claim of the defendant annexed thereto; and the person so served shall from the time of such service, for all purposes, be in the same position as if he were a defendant served with an original summons with the notice of claim annexed thereto as a plaintiff's particulars. *See p. 149.*

Forms 65  
and 66.

2. Any person served with a notice under the last preceding rule, may, upon giving four days' notice of such application to all parties interested, apply before the trial to the judge for directions as to the conduct of the action, and as to any proceedings or notices therein, and upon such application the judge may make such order and give such directions as he shall think fit. *See p. 149.*

A person not a party served under last rule may apply to judge for directions as to conduct of action.

3. A person served with notice of counter claim under rule 1 of this order may apply to the judge for an order that such counter claim be not allowed, and upon such application the judge may make such order and give such directions as he shall think fit. *See p. 149.*

Where a counter claim made, any party may apply to judge for disallowance.

4. Upon any counter claim or other claim being made under rule 1 of this order the registrar shall have authority to order the postponement of the trial to a day to be appointed by him, having regard to the nature of such claim, and of the proceedings likely to arise thereon, and upon such postponement notice thereof shall be given by the registrar to all parties interested. *See p. 149.*

Where a counter claim, registrar may postpone trial.

## ORDER XI.

### INTERLOCUTORY AND INTERIM ORDERS AND PROCEEDINGS.

1. Where any party desires before trial an order upon any of the matters following (that is to say), an order in the nature of an injunction or an order of court for the production of any deed, for the appointment of a receiver, or to secure the possession, detention, or preservation of any property, or to obtain security from any person for any moneys in his possession, or to enforce the deposit or payment into court thereof pending litigation, or the sale of any goods, wares, or merchandise which may be of a perishable nature, or which the court may think desirable to have sold at once, and the payment of the price thereof into court, or for the inspection or taking samples of any goods, wares, or merchandise, or for measuring, weighing, or making any experiment upon any goods, wares, or merchandise, or for surveying, measuring, or making any plan, level, or section of any building or place, or for a view of any premises that may be in dispute, or the taking any accounts or making any inquiries, he may file an application for such order, and apply *ex parte* to the judge, either in or out of court, upon affidavits setting forth the facts rendering such order immediately necessary,

Mode of application for interlocutory or interim order.

and upon such application the judge may either make an order absolute in the first instance, or make an order to be absolute at any time to be ordered by him unless cause be shown to the contrary, or may make such other order or give such directions in the matter as the judge may think fit, and may order immediate execution. *See p. 166.*

Where specific property other than land is sought to be recovered.

2. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the judge upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such judge may direct, and that upon such payment into court being made, the property be given up to the party seeking to recover it. *See p. 166.*

Draft orders to be prepared by registrar.

3. The draft of all orders under the last two preceding rules shall be prepared beforehand by the party applying, and be settled by the registrar of the court, and when the party makes such application he shall present the draft order to the judge for his approval, and the judge, if he approves thereof, shall sign the same. *See p. 167.*

Registrar to draw up orders in conformity with draft settled by judge.

4. The draft so signed shall be transmitted by the applicant to the registrar of the court, who shall draw up the order in conformity therewith, and seal and file the same, and issue a copy thereof under the seal of the court to the bailiff or party's solicitor for service. *See p. 167.*

Deposit may be ordered where defendant resides 20 miles from court.

5. Where the residence or place of business of a defendant is more than twenty miles from the court in which the plaint is entered, he may, not later than two clear days from the date of service of the summons thereon, forward by registered post letter to the registrar of such court an affidavit disclosing a good defence upon the merits to the action. The registrar upon receipt of such affidavit, if satisfied that it discloses such a defence, shall forthwith by notice, according to the form in the schedule, call upon the plaintiff to deposit in court, within two clear days from the date of the notice, such a sum as the registrar may, having reference to all the circumstances of the case, therein direct. The registrar shall, where the deposit is made or not made, or the affidavit does not disclose a defence, send notice according to the forms in the schedule to the defendant, and where the deposit is not duly made the action shall be struck out. *See p. 147.*

Form 68.

Forms 67 and 69.

Order may authorise entry upon lands for the purpose of executing order.

6. An order for inspecting, surveying, measuring, or for making any plan or model, may also give authority to any person, to be named in such order, to enter with such persons as may be necessary for his assistance, upon any lands or tenements to be described in such order, in the possession

of any party to the action, for the purpose of executing the said order. *See p. 167.*

7. Where an order is made for inspecting, surveying, measuring, weighing, making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the registrar or some other person to be named therein, to examine upon oath and take the deposition of the person so named, as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding. *See p. 167.*

Registrar to take deposition of person ordered to weigh, inspect, &c.

8. Where before or at the trial of any action it appears to the court expedient that a receiver be appointed, such appointment shall be made whether the same be asked as part of the relief in the plaint or not. *See p. 167.*

Receiver may be appointed though not asked for.

9. Where an action is brought in the name of a firm and the defendant desires to know the names of the persons who are co-partners in such firm, he shall give notice in writing, within three days after the service of the summons, to the plaintiff that he requires such names, and the plaintiff shall forthwith send by post to the defendant so applying and to the registrar the names and addresses of such persons: provided that the judge may at any time without such notice order the plaintiff to give to any defendant the names of such persons: provided also, that if from the names of the members of the co-partnership not being given by the plaintiff before entering the plaint, or from any delay in giving the same upon the before-mentioned notice, the defendant is prevented or unduly delayed in making his defence, the judge may adjourn the hearing upon such terms as he may think fit. *See p. 97.*

Application for names of firm in an action by a firm.

## ORDER XII.

### DISCONTINUANCE, DISCLAIMER, ADMISSION, AND PAYMENT INTO COURT.

1. If the plaintiff desires to discontinue the action or matter against all or any of the parties thereto, he may give notice in writing thereof to the registrar, and the registrar shall forthwith forward a notice according to the form in the schedule, by post or otherwise, to the party or parties as to whom the plaintiff so desires to discontinue the action, and such party shall not be entitled to any further costs than those incurred up to the receipt of the notice, unless the court shall otherwise direct. *See pp. 131, 278.*

Discontinuance of action. Form 4, Appendix F Form 154.

2. The defendant may file a statement disclaiming any interest in the subject-matter of the action, or admitting or denying any of the statements in a plaintiff's particulars, or raising any question of law on such statements without admitting the truth thereof; or he may therein state concisely any new fact or document upon which he intends to rely as a defence, or to bring to the notice of the court; and a copy

Disclaimer, admission, and other statements by defendant.



thereof shall be transmitted by the registrar to the plaintiff: provided always, that in exercising his discretion as to costs, the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule. *See pp. 140, 278.*

Admission  
of truth of  
plaintiff's  
statement.

Forms 197  
and 198.

3. Where a defendant desires to admit the truth of the statement in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may at any time before the return-day, in the presence of a registrar of a county court, or in the presence of one of his clerks, or of a solicitor, sign an admission in the form contained in the schedule to these orders; and the signature of the defendant thereto shall be verified by affidavit, unless signed in the presence of a registrar of a court, or of one of his clerks, and such admission shall be filed at least five clear days before the return-day; and the registrar shall transmit a copy thereof by post to the plaintiff or his solicitor; and the plaintiff shall not, unless the judge shall otherwise order, be allowed any costs incurred after the service upon him of such admission in relation to the proof of the matter so admitted: provided that the plaintiff or his solicitor shall be entitled, notwithstanding such admission, to his costs of attending on the day of trial to enter up judgment and tax his costs. *See pp. 131, 278.*

Payment  
into court  
before  
judgment,  
how made.  
9 & 10 Vict.  
c. 95, s. 82.

4. Where the defendant is desirous of paying money into court on an ordinary summons, he shall, except otherwise expressly provided, pay the same at least five clear days before the return-day, with court fees proportionate to the amount paid in, and the solicitor's costs, if any; and the registrar shall within twenty-four hours from the time of such payment send to the plaintiff notice thereof by post: provided that at any time before the return-day the defendant may pay money into court, with such costs as aforesaid, and the registrar shall give notice thereof to the plaintiff as aforesaid; but where money is so paid in less than five clear days before the return-day, or without such costs, it shall be lawful for the court to order the defendant to pay such fees and costs as the plaintiff shall have properly incurred in entering the plaint, preparing for trial, and in attending the court, but no hearing fee shall be charged. *See p. 145.*

Acceptance  
of amount  
paid in as  
satisfaction  
of claim.  
9 & 10 Vict.  
c. 95, s. 82.  
Form 3,  
Appendix F.

5. If the plaintiff elect to accept, in full satisfaction of his claim, including costs, such money as shall have been paid into court by the defendant, and shall send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's place of dwelling or place of business, a written notice, stating such acceptance, within such reasonable time before the return-day as the time of payment by the defendant has permitted, the action shall abate, and the plaintiff shall not be liable to any further costs. But in default of such notices from the plaintiff the action may proceed. *See p. 145.*

Where  
amount  
admitted  
includes  
amount of  
a set-off.

6. Where a defendant pays into court any sum admitted by him to be due, after deducting any amount he may claim as a set-off, he must pay therewith court fees proportionate to the total amount of the sum admitted, together with the sum he claims to set off. *See p. 145.*



7. Where a defendant, in an action of libel remitted under section 10 of the County Courts Act, 1867, pays money into court under section 2 of 6 & 7 Vict. c. 96, the last two rules shall apply to and be observed with reference to such payment into court, so far as they are applicable. *See p. 260.*

Payment in an action of libel.

8. Where a defendant pays money into court in part payment of the amount claimed, or in order that he may plead the defence of tender, and the plaintiff does not accept the sum paid in satisfaction of the action, the money shall not be paid out until after the judgment, and then if any costs shall have been awarded to the defendant, such costs shall be deducted therefrom and be paid to the defendant. *See pp. 144, 146.*

In certain cases money paid in to be retained.

### ORDER XIII.

#### DISCOVERY, INSPECTION, AND ADMISSION.

1. Where in any action any party desires the production of any document or documents relating to the matter in question in such action, he shall make an affidavit that he has reason to believe that such document or documents is or are in the possession or power of one of the parties, and the registrar shall, upon the delivery to him of the affidavit and a copy thereof, file the affidavit, and make an order (annexing thereto the copy of the affidavit), that the party against whom such application is made shall answer on affidavit stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he objects, and if so, on what grounds, to the production of such of the documents as are in his possession or power; and the time within which the opposite party shall return such affidavit to the court shall be stated in the order, which order shall be served by the bailiff of the court or a solicitor, or by post. *See p. 150.*

Production of documents. Form 54.

Form 55.

2. The party against whom such order is made shall answer on affidavit according to the terms of the order, and send the affidavit and a copy thereof to the registrar, by post or otherwise, within the time stated in the order; and the registrar shall, immediately upon receiving such affidavit, file the same and transmit by post or otherwise to the party making the application, the copy of the affidavit. *See p. 151.*

Answer to order to produce. Form 56.

3. Where after such last-mentioned affidavit is filed, the party making the application requires a further order thereon, he shall apply to the registrar for such further order, and if there be no matter of fact or law in dispute between the parties, the registrar shall make an order in writing, in accordance with the facts; but if there shall be any matter of fact or law in dispute between the parties, the registrar shall transmit both affidavits to the judge, who shall direct the registrar to give notice, by post or otherwise, to both parties of a time and place when and where he will hear the application, and make such order thereon as shall be just. *See p. 151.*

Further order after answer received.

4. An order for the production of any deed or document shall state the time when and the person to whom the same shall be produced, and it may further order that the same may

Order shall state time, &c., of production.

be deposited with the registrar to be produced at any trial or hearing, or that the registrar may make a copy thereof for any party. *See p. 153.*

Inspection  
of docu-  
ments.

5. Where in any action any party is desirous of inspecting any written or printed document or instrument which he is entitled to inspect, relating to the matter in question in such action, and which shall be in the possession or power or under the control of the other party, such first-mentioned party may, five clear days before the day of hearing, give notice to the other party, by post or otherwise, that he or his solicitor desires to inspect any such document or instrument, describing the same, at any place to be appointed by the other party; and if such other party shall neglect or refuse to appoint such place, or to allow such plaintiff or defendant or his solicitor to inspect such document or instrument within three clear days after receiving such notice, the judge may, in his discretion, on the day of trial, adjourn the action and make such order as to costs as he shall think fit. *See pp. 152, 153.*

Interroga-  
tories.

Form 57.

6. Where a party desires to interrogate any party he shall apply to the registrar for leave to deliver interrogatories, and upon making such application he shall file an affidavit made by himself only or by himself and his solicitor or agent, if any, or by leave of the registrar by his solicitor or agent only, stating that the deponent believes that the party proposing to interrogate will derive material benefit in the action from the discovery which he seeks, and that there is a good cause of action or defence upon the merits. And upon such application the registrar shall make an order according to the form in the schedule that the applicant may, within a time to be named in such order, deliver to the party to be interrogated interrogatories in writing upon any matter as to which the applicant seeks discovery, and shall in such order require the party interrogated to answer the questions in writing by affidavit, and file such answers within such time to be appointed by the registrar as shall enable the party making the application to use the answers so returned as evidence at the trial. *See pp. 154, 155.*

Form 58.

Objection to  
interroga-  
tories.

7. Where a party served with the order shall object to answer the interrogatories, he shall file an affidavit stating his grounds for objecting, and that he will be prepared to show cause to the court at the return-day against his being required to answer them, but where it is only some of the interrogatories he objects to answer, he may include in his affidavit both his replies and his objections. *See p. 155.*

Successful  
objection.

8. Where the party required to answer interrogatories shall successfully show cause against an order requiring him to answer them, the judge may direct the action to proceed, or to be adjourned if he thinks fit, and upon terms as to costs; but if the party objecting shall not show sufficient cause for his objection, the judge may order the interrogatories to be then and there answered *viâ voce* in court, or may adjourn the action, and make an order for the answering of the interrogatories by such time, and for the payment of such costs as may have been incurred through the delay, as he may think fit. *See p. 155.*

9. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice to any other party in the action who is competent to make admissions requiring him to inspect and admit such document; and if such other party shall not within three days after receiving such notice make such admission, any expense of proving the same at the trial shall be paid by him, whatever be the result of the action, unless the court shall otherwise order; and no costs of proving any document shall be allowed unless such notice shall be given, except in cases where, in the opinion of the registrar, the omission to give such notice has been a saving of expense. *See p. 153.*

Admission  
of docu-  
ments.

## ORDER XIV.

### EVIDENCE.

1. Summonses to witnesses may be issued without leave of the court, to be served either in the home or in any foreign district, and may, by leave of the judge or registrar, be issued in blank and served by the party applying for the same or his solicitor, or by some person in the permanent and exclusive employment of the party or his solicitor, but only one name shall be inserted in such summons. *See p. 156.*

Witnesses.  
Forms 20  
and 21.

2. It shall be sufficient if a summons to a witness be served a reasonable time before the return-day. *See p. 156.*

Time of  
service.

3. Except where otherwise provided by these rules, the evidence of witnesses shall be taken *vivâ voce* on oath according to the former practice on the trial of plaints. Where by these rules evidence is required or permitted to be taken by affidavit such evidence may be taken *vivâ voce* on oath if the judge or registrar shall at the hearing of any application or otherwise so direct. *See pp. 156, 159, 180.*

Evidence  
may be  
taken *vivâ  
voce*.

4. Where a witness served with a summons shall not at the trial produce the documents required, the court may, upon admission or proof of the service of such summons within a reasonable time, and that such documents are in the possession or power or under the control of the party so served, and that they relate to the matter then pending before the court, make an order for their production by him, and the court may deal with them, when so produced, and with all costs occasioned by their non-production, as may appear just: provided that nothing herein shall prevent the court from receiving secondary evidence where admissible of any document the production of which has been required as above. *See p. 157.*

Where the  
documents  
are not pro-  
duced, order  
for produc-  
tion may be  
made.

5. Where any documents are produced to the court from proper custody, they shall be read without further proof, if they appear genuine, and if no objection be taken thereto; and if the admission of any document so produced be objected to, the judge may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the judge shall otherwise order. *See p. 154.*

Documents  
produced  
from proper  
custody to  
be read  
without  
proof unless  
objected to.

Where it is desired to use an affidavit, notice may be given.

6. Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts, he may, five clear days before the hearing, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party shall within two clear days give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof, unless the judge shall otherwise order. *See p. 158.*

Registrar to transcribe answers in examination under rules.  
17 & 18 Vict.  
c. 125, s. 53.

7. In executing any order made under these rules or under section 53 of the Common Law Procedure Act, 1854, the registrar or his clerk in his presence shall transcribe the answers given by the witnesses examined before him, and the registrar shall read over the answers so transcribed, and the witness shall sign his name at the foot thereof, and the registrar shall thereupon file the same as the deposition of such witness. *See p. 155.*

Examination of witness out of jurisdiction of court.

8. Upon the application of a party desirous to examine a witness residing out of the jurisdiction of the court, the judge may, if he thinks fit, appoint the registrar of the court within the district of which such witness resides to take the examination of such witness, who shall take the same in the manner provided by the last preceding rule, and transmit it by post to the registrar of the court in which the action is pending. *See pp. 155, 156.*

Examination of a witness *de bene esse*.

9. Where it shall be necessary to examine a witness *de bene esse*, application upon affidavit shall be made to the judge or registrar to appoint an examiner for that purpose. *See p. 156.*

Affidavits, evidence of person using them.

10. Affidavits and depositions shall be read as the evidence of the person by whom they are used. *See pp. 159, 180.*

## ORDER XV.

### CHANGE OF PARTIES.

Notice to be given to defendant of change of plaintiff's title.  
No form.

1. Where there shall be any assignment, creation, or devolution of the estate or title of any plaintiff before judgment, the person to or upon whom such estate or title has come or devolved may give notice thereof to the registrar according to the form in the schedule, with his name and address, together with an affidavit of the truth of the fact stated in such notice. And thereupon the registrar shall cause a copy of such notice to be served by post upon the defendant in the action, and a further notice that unless upon a day to be named therein he appears and shows cause against the same, the person to or upon whom such estate or title has come or devolved will be substituted for, or made a joint plaintiff with, the plaintiff named in the original summons. *See p. 107.*

Notice to plaintiff of change in defendant's title.

2. Where there shall be any assignment, creation, or devolution of the estate or title of any defendant, the plaintiff or the defendant may in like manner give notice to the registrar, who shall take proceedings thereon as prescribed by the last

preceding rule, and a defendant may be substituted or added, as the case may be, in manner provided in such rule for the substitution or addition of a plaintiff. *See p. 107.*

3. Where a plaintiff or a defendant is substituted or added under either of the two preceding rules, the minute-book shall be altered, and all subsequent proceedings carried on under the altered title. *See p. 108.* Alteration of records on change of parties.

4. Where a sole plaintiff or defendant or one or more of *several* plaintiffs or defendants shall die *before* judgment, the action shall not abate if the cause of action survive or continue. *See p. 108.* Abatement.

5. Execution on any judgment may issue on behalf of any person not a party to the action by leave of the registrar, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new plaintiff, together with a statement of his derivative title for that of the original plaintiff, and the registrar shall give notice according to the form in the schedule of such substitution to the defendant by post, and execution shall not issue upon the judgment until the expiration of six clear days after the posting of the notice. *See p. 108.* How execution may be issued by person not a party.  
Form 136.

6. When one or more of *several* plaintiffs or defendants shall die *after* judgment, proceedings thereon may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the court. *See p. 108.* Death of party after judgment.

7. Execution or other process on a judgment shall not issue against any person not a party to the action or matter, except a plaint upon the judgment be entered in the nature of a *scire facias*, the proceedings in which shall be the same as in ordinary cases. *See p. 109.* How execution against a person not a party may be obtained. Forms 137, 138.

8. Where a judgment has been given against a person deceased, his executors or administrators may be sued upon the judgment in the manner provided by the last-preceding rule. *See p. 109.* Representatives of deceased judgment-debtor may be sued.

## ORDER XVI.

### TRIAL.

1. Notice of demand of a jury shall be made in writing to the registrar of the court three clear days before the day of trial, and the summonses to the intended jurors shall be delivered to the bailiff forthwith. *See pp. 159, 161.* Notice of demand of a jury.

2. Where notice of a demand of a jury has not been given in due time, or if at the trial both parties desire to try by a jury, the judge may, on such terms as he shall think fit, adjourn the action in order that the necessary steps for such trial may be taken, and the trial shall take place accordingly. *See p. 160.* Adjournment in order to try by jury.

3. Actions for the recovery of land or tenements, or for any damages in respect of, or to enforce any right relating to land, or of interpleader and of replevin, and proceedings in the nature of *scire facias*, may, at the instance of either party, be tried by a jury. *See pp. 160, 235, 273, 278, 285.* Certain additional actions and cases may be tried by jury.

Number of  
jurymen. 4. The number of jurymen summoned to attend at a court for the trial of actions shall be ten, unless the judge shall otherwise order. *See p. 161.*

Where  
plaintiff  
does not  
appear. 5. If at the return-day the plaintiff does not appear, and the defendant does appear, and does not admit the plaintiff's claim, the court may, in its discretion, award to the defendant costs in the same manner, and to the same amount, as to counsel, solicitor, witnesses, and other matters, as if the action had been tried but no hearing fee shall be charged. *See pp. 178, 279.*

Where  
neither  
plaintiff nor  
defendant  
appear in  
cases under  
sect. 1 of 38  
& 39 Vict.  
c. 50, and 18  
& 19 Vict.  
c. 67. 6. Where a default summons has been issued and notice of defence has been given, and neither the plaintiff nor defendant appear at the return-day, the action shall be struck out; and where notice of defence has been given, and the defendant appears and the plaintiff does not appear, the action shall be struck out and costs ordered against the plaintiff, and where the plaintiff appears and the defendant does not, judgment may be entered for the plaintiff without further proof. *See p. 129.*

Solicitors to  
sign a roll. 7. No solicitor shall be allowed to appear for any person in a county court, until he has signed a roll or book to be kept by the registrar for that purpose, but no fee shall be payable for that purpose, and he shall, once in every year, if required by the registrar, produce his certificate for the year to the registrar, who shall note the fact on the roll. *See p. 177.*

No notice of  
employment  
of counselor  
solicitor  
required. 8. It shall not be necessary for either party to give notice to the other, or to the court, of his intention to employ a barrister or solicitor to act as his advocate at the trial, and the allowance of costs for such barrister or solicitor shall not be affected by such want of notice. *See p. 177.*

Appoint-  
ment of  
guardian *ad*  
*litem* to  
infant  
defendant. 9. Where an infant defendant appears at the return-day, and names a person willing to act as his guardian, and who then assents so to act, such person shall be appointed guardian accordingly; but if the defendant do not name a guardian, the judge may appoint any person in court willing to become guardian or in default of such person the judge shall appoint the registrar of the court to be guardian, and the action shall proceed thereupon as if another person had been appointed guardian, and the name of the guardian appointed shall be entered according to the form in the schedule, but no responsibility shall attach to the person so appointed guardian at the instance of the court. *See p. 100.*

Forms 95  
and 96.

Action  
pending in  
another  
court for  
same cause. 10. Where at the return-day it shall appear that an action for the same cause at the suit of the same plaintiff is pending in any other court of record, the court shall order the plaintiff to be struck out unless the plaintiff shall undertake to discontinue the action in such other court, before a day to be named, to which the trial shall be adjourned, and unless before such adjourned trial such action shall have been discontinued, the plaintiff shall then be struck out. *See p. 185.*

General  
jurisdiction  
of court on  
trial of  
action.

11. At the return-day the court may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order, or give any direc-



tion it may consider necessary to enable it to give a final judgment upon a day to which the trial may be adjourned, and may also make such order as to costs as it may think fit. *See p. 181.*

12. Where at the return-day it shall appear to the court that there are claims, estates, titles, or rights, or any equitable duties or liabilities, upon which he cannot adjudicate by reason of all the proper parties not being before the court, he may order such parties to be made plaintiffs or defendants, upon such terms as to adjournment, notices, and costs as he shall think fit. *See pp. 96, 182.*

Absent parties may be added on hearing.  
15 & 16 Vict. c. 86, s. 42.

13. Where a counter or other claim has been made, or any incidental claim arises at the trial, and the judge thinks that such claim can be better disposed of by an independent action, he may order that such be excluded, whether any application is made to him or not. *See pp. 149, 150.*

Counter or other claim may be tried by an independent action.

14. If a person not originally a party to the action who has been served with a notice of counter or other claim does not appear at the trial the judge may proceed with the trial, and give such judgment or make such order against the person so served and not appearing, or the judge may postpone the trial and give such directions and make such order as to costs as he shall think fit. *See p. 150.*

When a person brought in does not appear at trial.

15. Where two or more defendants are joined and judgment is given separately against each with costs, unless the judge shall otherwise order, the costs shall be apportioned according to the respective amounts of each judgment. *See p. 192.*

Separate judgments against defendants where more than one.

16. Where in any action a set-off or counter claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. *See p. 150.*

Judgment may be given for balance found due to defendant.

17. Any judgment of nonsuit, unless the judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the judge shall seem just. *See p. 184.*

Effect of nonsuit.

18. Where any of the parties to an action are officers of the court, the judge if he thinks fit may direct the trial to take place at some convenient court of which he is not the judge. *See p. 172.*

Action against officer of court.

## ORDER XVII.

### AMENDMENT.

1. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the court, if satisfied that it has been so commenced

Change of plaintiff.



through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may, if the person or persons to be substituted or added consent thereto, order such other person or persons to be substituted or added upon such terms, as to notice and otherwise, as may seem just. *See p. 93.*

Where two persons made plaintiffs.

2. Where it appears at the trial that a *less* number of persons have been made *plaintiffs* than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to all matters, as if the proper persons had been originally made parties; and if such person shall, either at the trial or at some adjournment thereof, personally or by writing, signed by him or his solicitor, consent to become a plaintiff in manner aforesaid, the court shall then pronounce judgment as if such person had originally been made a plaintiff; but if such person shall not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, judgment of nonsuit shall be entered, but such judgment of nonsuit shall not have the same effect as a judgment upon the merits for the defendant. *See p. 95.*

Change of defendant.

3. Where a person other than the defendant appears at the trial, and admits that he is the person whom the plaintiff intended to charge, or ought to have charged, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the action shall proceed, as to all matters, as if such person had been originally named in the summons, and the costs of the person originally named as the defendant shall be in the discretion of the court. *See p. 93.*

Where party wrongly sued in a representative character.

4. Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the court may, at the instance of either party, on such terms as it shall think fit, amend the proceedings accordingly, and thereupon the action shall proceed, as to all matters, as if the proper description of the party had been given in the summons. *See p. 94.*

Where party ought to have been sued in a representative character.

5. Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the court may, at the instance of either party, on such terms as it shall think fit, amend the proceedings accordingly, and thereupon the action shall proceed, as to all matters, as if the proper description of the party had been given in the summons. *See p. 94.*

Amendment of name or description of plaintiff.

6. Where the name or description of a *plaintiff* in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to all matters, as if the name or description had been originally such as it appears after the amendment has been made. *See p. 93.*

Amendment of

7. Where the name or description of a *defendant* in the summons is insufficient or incorrect, it may be amended at the

instance of either party by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to all matters, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description the action may proceed, and in the judgment, and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner. *See p. 94.*

8. In actions by or against a husband, if a wife or husband be improperly joined or omitted, or if one of them be improperly substituted for the other, the summons may at the trial be amended at the instance of either party by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to set-off and other matters, as if the proper person had been made party to the action. *See p. 94.*

9. Where it appears that a greater number of persons have been made plaintiffs than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to all matters, as if the proper party or parties had alone been made plaintiffs. *See p. 95.*

10. Where it appears at the trial that a greater number of persons have been made defendants than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the court, on such terms as it shall think fit, and thereupon the action shall proceed, as to all matters, as if the proper party or parties had alone been made defendants, and the cost of the person improperly joined as a defendant shall be in the discretion of the judge. *See p. 95.*

11. Where two or more persons are made defendants and some of them have not been served, the name or names of the defendant or defendants who have not been served, may, at the instance of either party, be struck out by order of the court, on such terms as it shall think fit; and thereupon the action shall proceed, as to all matters, as if the party or parties whose name or names have not been struck out, had alone been made defendant or defendants, or it may be adjourned for service of any defendant not served. *See p. 95.*

12. No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name or names of any party or parties, whether as plaintiffs or defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff

name or description of defendant.

Improper joinder or omission of husband or wife in action against a husband.

Where too many persons made plaintiffs.

Where too many persons made defendants.

Where all defendants have not been served.

Action not to be defeated by misjoinder of parties.

without his consent thereto. All parties whose names are so added as defendants shall be served with a notice in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such notice. *See pp. 93, 96.*

Application  
to add or  
strike out  
parties.

13. Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at the trial of the action or to the judge under section 4 of the County Courts Act, 1875. *See p. 96.*

## ORDER XVIII.

### JUDGMENTS AND ORDERS.

Entry of  
judgments.

1. All orders of adjournment or for the payment of costs, and all judgments for the payment of any debt or damages or costs, shall be entered by the registrar in the minute-book; but all special judgments or orders in the nature of decrees shall be settled by the registrar, and shall be sealed with the seal of the court and filed of record, and a minute of such filing with the date thereof shall be entered in the minute-book. *See pp. 185, 302.*

Orders for  
payment of  
money or  
adjourn-  
ments may  
be served  
by post.

2. Orders for payment of money or costs, or both, and orders of adjournment, when directed to be served, shall in all cases be prepared by the registrar of the home court, and delivered to the bailiff, who shall within twenty-four hours send them, by post or otherwise, to the parties on whom they are respectively directed to be served: provided always, that it shall not be necessary for the party in whose favour any order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party. *See pp. 173, 187, 219, 338.*

No order of  
judgment  
by default.

3. Where judgment is entered up against a party served with a default summons no order need be drawn up or served. *See pp. 129, 266.*

Purposes  
for which  
certificate of  
a judgment  
required,  
to be stated.  
Form 33.

4. Any person requiring a certificate of any judgment or order shall state in writing whether such certificate is required for the purpose of removing the proceeding to any other court, or for the purpose of evidence only; and in such latter case the registrar shall state thereon the purpose for which it is required. *See pp. 242, 333.*

Certain  
orders need  
not be  
drawn up.

5. Where the court gives leave to take any proceeding, it shall not be necessary to draw up any order, nor shall any order be drawn up to warrant such proceeding. *See p. 219.*

Form of  
order for  
payment.

6. Unless an order is made for payment forthwith, it shall be payable fourteen days from the date of the order unless the court otherwise directs, and where it is for the payment of any sum of money by instalments, such instalments shall be payable at such periods as the court shall order; and if no period be mentioned, the first shall become due on the twenty-eighth day from the day of making the order, and every successive instalment shall become due at a like period of twenty-eight days from the day of the previous instalments becoming due; and such instalments shall be paid into court in accordance with section 45 of the County Courts Act, 1856. *See p. 186.*

7. When an order is made for payment by instalments or otherwise, the registrar shall give notice to the plaintiff by post, according to the form in the schedule of every payment made: provided that such notice shall not be given where the payment does not exceed 10s. *See p. 188.*

Notice of  
payments  
into court.  
Form 25.

8. Where in an action brought under section 11 of the County Courts Act, 1867, to recover land or damages in respect of any right relating to land, the title of the plaintiff shall appear to have existed, as alleged in the summons, at the time of the entry of the plaint, but to have expired before the return-day, the plaintiff shall be entitled to judgment according to the fact that he was so entitled, and for his costs of suit, unless the court shall otherwise order. *See p. 279.*

Judgments  
under s. 11  
of 30 & 31  
Vict. c. 142.

Form 160.

9. Where in an action brought under section 11 of the County Courts Act, 1867, to recover land, judgment is given for the plaintiff, execution may issue upon a day to be named in the judgment, and if no day be named, then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given. *See p. 279.*

Execution  
on judgments  
under 30 & 31  
Vict. c. 142, s. 11.

10. Where in an action brought under section 11 of the County Courts Act, 1867, to recover land, judgment has been obtained for the recovery of possession and costs, there may be either one warrant or separate warrants of execution for the recovery of possession and for the costs at the election of the plaintiff. *See p. 279.*

Separate  
warrants  
for possession  
and costs in  
judgments  
under 30 &  
31 Vict. c.  
142, s. 11.

11. Where in an action brought under section 11 of the County Courts Act, 1867, to recover land, judgment is given for the defendant or any of them with costs, execution may issue for the costs against the plaintiffs upon a day to be named in the judgment, and if no day be named, then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given. *See p. 279.*

Executions  
for costs  
against  
plaintiff in  
action under  
30 & 31 Vict.  
c. 142, s. 11.

12. Where in any action the right or title to any easement shall come in question, and the right or title to such easement shall be proved to the satisfaction of the judge, the judge may, in addition to giving judgment for the successful party for his damages and costs, or for costs, as the case may be, make an order in the nature of an injunction requiring the party interrupting or obstructing the user of such easement to permit the other party to use and enjoy such easement free from interruption. *See p. 285.*

Injunction  
in action  
involving  
title to  
easement.

13. Where an order directs any deed to be prepared and executed, it shall state by what party the said deed shall be prepared, and to whom it shall be submitted for approval, and if the parties cannot agree as to the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled subject to the final approval of the judge. *See p. 303.*

Where order  
directs a  
deed to be  
prepared.

14. Where real property is ordered to be sold, the order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of

Sale of real  
property.

title shall be prepared. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, it shall name the counsel to whom they are to be submitted. *See p. 302.*

Sale of  
personal  
property.

15. Where an order directs any personal property to be sold, the same shall be sold, under the superintendence of the high bailiff, by public auction, unless the court shall otherwise direct. *See pp. 302, 338.*

Accounts,  
how to be  
taken.

16. Where an order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar, and he shall for that purpose have all the powers which a chief clerk of the master of the rolls, or a vice-chancellor of the Court of Chancery had prior to November 1, 1875, and all parties shall have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they would have upon the trial of an action; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the trial, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries. *See p. 303.*

Registrar to  
appoint  
time and  
place for  
inquiries  
and taking  
account.  
Forms 12,  
209.

17. Where the registrar is ordered to make inquiries or to take accounts, he shall by summons, according to the form in the schedule, and returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, direct such parties to attend at his office or at the court, for the purpose of proceeding with such inquiries or accounts. In all cases in which advertisements are ordered the return-day shall not be less than twenty-one days, and the registrar shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of such sitting, and shall insert the same fourteen days previous to such sitting. *See p. 303.*

Hearing  
before  
registrar.

18. Upon the day so appointed, or at any adjourned sitting, the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or solicitors. *See p. 303.*

Books of  
accounts to  
be taken as  
*prima facie*  
evidence of  
truth of  
matters  
therein.

19. Where an order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept shall, unless the judge shall otherwise direct, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. *See p. 303.*

Advertise-  
ments for  
creditors in  
administra-  
tion.

20. Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, which shall be issued pursuant to any order, shall direct every such creditor or other person, by a time to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the

security (if any) held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims. *See p. 304.*

21. No such creditor or other person need make any affidavit, or attend in support of his claim, unless he is served with a notice requiring him to do so, as hereinafter provided. *See p. 304.*

Creditors need not prove unless required.

22. Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as shall be specified in such notice. *See p. 304.*

Creditors holding security to produce same.

23. Every person claiming as heir-at-law, devisee, next of kin, or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified. *See p. 304.*

Pedigree, if required, to be produced.

24. In case any creditor or other person shall neglect or refuse to comply with the two last preceding rules, he shall not be allowed any costs of proving his claim, unless the registrar shall otherwise direct. *See p. 304.*

Creditor refusing to have no costs.

25. At the time appointed for adjudication upon the debts or claims, the registrar shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discretion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed. *See p. 304.*

Allowance of debts or claims.

26. Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every such creditor or other person whose claim or any part thereof has not been allowed to attend and prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed. *See p. 304.*

Notice of allowance or non-allowance of claim. Form 210.

27. Any such creditor or other person who has not before sent in the particulars of his claim pursuant to the advertisement, may do so two days previous to any day to which the adjudication is adjourned. *See p. 305.*

Claim may be sent in before adjudication.



Where claim sent in after time fixed.

28. If any claim be sent in after the time fixed by the advertisement (except as before provided in case of an adjournment), the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he thinks fit. *See p. 305.*

Just allowances.

29. In taking any account, all just allowances shall be made without any directions for that purpose in the order to take such account. *See p. 305.*

Registrar's certificate. Form 211.

30. Where a registrar has been ordered to certify to the court upon any matter, he shall present to the court a certificate in writing signed by him. *See p. 306.*

Registrar's certificate to lie in office. Form 212.

31. The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice by post to all parties to the action that the same lies in his office for the inspection of any parties interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy. *See p. 306.*

Variation of registrar's certificate.

32. Where any party interested in, or affected by, the registrar's certificate desires to have the same varied, he shall apply by himself, his counsel or solicitor, at the court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon as he may think fit. *See p. 306.*

Confirmation of certificate.

33. If no application shall be made to vary the certificate, it shall be taken as confirmed, unless the judge shall otherwise order. *See p. 306.*

Application to judge for further directions.

34. Where the registrar, high bailiff, receiver, or any party has by any order been directed to do any act, for doing which it may be found necessary to have further directions or an order of the court, the registrar shall apply to the judge for such direction or order, and upon such application the judge may give such direction or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge shall make such appointment for hearing, the same shall operate as a stay of proceedings in the action until the day so appointed, if he shall so direct. *See p. 305.*

Absent parties.

35. Where any matter is referred to the registrar by an order, he shall, as soon as conveniently may be, ascertain if there are any parties who, if the order had been made in a suit pending in the Chancery division of the High Court of Justice, ought, under the 42nd section of the 15 & 16 Vict. c. 86, to be served with a notice under rule 8 of such section. *See p. 306.*

Form 208.

Notices to absent parties.

36. Where it shall be necessary to serve any parties with the notice mentioned in the last preceding rule, the same shall be prepared by the registrar, and issued by him to the bailiff who shall serve the same, and upon such notice the party served therewith may attend the proceedings under the order. *See p. 306.*



37. Any party who shall be served with a notice under the last preceding rule, may apply to the court at the next sitting, or by leave of the judge at any subsequent sitting, to cancel, vary, or add to the order. *See p. 306.*

Absent parties may apply for variation of order.

38. Where a defendant desires to have the judgment or order of the court upon any question between himself and any person other than the plaintiff, he shall ten days before the return-day give notice in writing to the person against whom, or as to whom he desires such judgment or order, that he will at the time of the trial apply to the court for such judgment or order, and shall set forth in such notice the substance of the judgment or order for which he so intends to apply. *See pp. 148, 302, 309.*

Order upon any question between defendant and other person not being plaintiff.

## ORDER XIX.

### ENFORCEMENT OF JUDGMENTS AND ORDERS.

1. Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages is enforced under section 94 of the County Courts Act, 1846. *See pp. 219, 239.*

Enforcement of order for payment of money.

#### *Warrants of Execution against the Goods.*

2. Warrants of execution against the goods shall bear date on the day on which they are issued, and shall continue in force for twelve calendar months from such date and no longer. *See p. 224.*

Date of warrants of execution.

3. Where a defendant has made default in payment of the whole amount awarded by the judgment, or where the judgment was for payment by instalments of an instalment thereof, a warrant of execution, without leave of the court, may issue against his goods; and such execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, unless in the case of instalments the judge shall otherwise specially direct in each case. *See p. 222.*

Where default made, execution may issue.

4. The registrar shall, on issuing a warrant of execution against the goods, indorse on such warrant the amount to be levied, distinguishing the amount adjudged to be paid, and the amount of the fee for issuing the warrant; and shall prepare and deliver to the bailiff with the warrant a notice according to the form in the schedule annexed; and the bailiff, upon levying, shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied. *See pp. 224, 226.*

Indorsement on warrant.

Form 22.

5. Warrants of execution against the goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant shall not be allowed against the execution-debtor unless by order of the court. *See p. 224.*

Concurrent warrants.

#### *Judgment Summons.*

6. No order of commitment under the Debtors Act, 1869, shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment summons, shall have been personally served upon the judgment-debtor. *See p. 242.*

Judgment summons to be served personally. Forms 39 and 285.

Where judgment summons may issue. 19 & 20 Viet. c. 108, s. 48.

7. A judgment summons shall not be issued by a court unless the debtor resides or carries on business or is employed within its district, or unless leave of the judge under section 48 of the County Courts Act, 1856, has been given, and a minute thereof entered, after hearing in open court the grounds on which the leave is asked; but the districts of the courts referred to in section 3 of the County Courts Act, 1867, shall be deemed to be one district, so far as relates to the issuing of judgment summonses by the court in which action was brought. *See pp. 56, 242.*

Where judgment summons applied for in court in which judgment was not obtained.

8. Where a judgment-creditor desires to apply for a judgment summons to a county court other than the county court in which the order or judgment was obtained, he shall obtain from the registrar of the county court in which the order or judgment was obtained a certified copy of the order or judgment in the action, according to the form in the schedule, and file the same with his application. *See p. 242.*

Form 38. Where judgment summons required on a judgment of a court other than a county court.

9. Where a party desires to enforce by commitment in any county court a judgment of any competent court, he shall obtain from such court an office copy of the judgment he desires so to enforce, and shall file such office copy, together with an affidavit of the sum then due thereon, with the registrar of the court of the district in which the party, against whom the same is to be enforced, resides or carries on business, who shall thereupon issue a judgment summons. *See p. 242.*

Form 236. Form of judgment summons.

10. Every judgment summons shall be according to the form in the schedule, and be issued not less than ten clear days, and be served not less than five clear days, before the day on which the judgment-debtor is required to appear, except in the case provided for by the next following rule. *See p. 243.*

Where judgment-debtor about to remove.

11. Where the person applying for the judgment summons shall state to the registrar that the judgment-debtor is about to remove from his dwelling or place of business, or is keeping out of the way to avoid service, then the judgment summons may be issued and served at any time before the hearing: provided that the court shall not act upon a summons issued under this rule, unless at the hearing the judge is satisfied, by evidence on oath, that at the time of the application for the judgment summons such party was about to remove from his dwelling or place of business, or was keeping out of the way to avoid service, in either of which cases service upon the party at any time before the time appointed for the appearance of such party shall be sufficient. *See p. 243.*

Judgment summons may issue without leave of court, except in certain cases.

12. A judgment summons may issue without leave of the court, except in cases provided for either by section 48 of the County Courts Act, 1856, or by the last rule, or where the judgment is more than six years old. *See p. 242.*

Successive judgment summons.

13. Where a judgment summons has not been served within due time by a bailiff, a successive summons may be issued without fee, and may be served by any person the judge or registrar may direct; but if such successive summons is not served in due time, no further successive summons shall be allowed, but a fresh summons may be issued on payment of the fee. *See p. 243.*

14. The hearing of a judgment summons may be adjourned from time to time. *See p. 243.* Adjournment.

15. Any witness may be summoned to prove the means of the judgment-debtor, in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined by the court, whether summoned or not, may be allowed by the court. *See p. 243.* Witness may be summoned.

16. Upon the issue of a judgment summons against a party upon an order or judgment of the court issuing the judgment summons, the bailiff of such court shall return into court any warrant of execution against the goods of such party which may have been issued in the action. *See p. 243.* On issue of judgment summons, where warrant of execution has been issued, it shall be returned into court.

17. Where a judgment summons is heard in a court other than that in which the order or judgment was obtained, and an order is made altering the terms of the order or judgment, all payments under the new order shall be made into, and execution or other process shall be issued by, the court which has so altered the order. *See p. 244.* Where order of one court altered by another court, proceedings to be continued in latter.

18. Where a certified copy of a judgment is obtained from the registrar of a county court, he shall make on the minute of the judgment a memorandum of having given such certificate, and no warrant of execution against the goods or judgment summons upon such judgment shall issue from such court, unless it be shown to the satisfaction of the court or registrar that no order has been made against the execution-debtor in any other court. *See p. 242.* Minute that a certificate has been given to be made.

19. Where a judgment-debtor shall upon the return-day of a judgment summons satisfy the court that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, or that, in respect of the debt, resolutions have been duly registered under the 125th or 126th sections of the Bankruptcy Act, 1869, no order of commitment shall be made. *See p. 246.* Bankrupt not to be committed.

20. Where a judgment-debtor shall, after the making of an order of commitment against him, file, in the court in which the order was made, an affidavit according to the form in the schedule, stating that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, or that, in respect of the judgment debt, resolutions have been duly registered under either of the before-mentioned sections of the Bankruptcy Act, 1869, and at the same time give notice to the judgment-creditor of the filing of the affidavit, no such order shall issue, or if issued but not executed shall be recalled. *See p. 247.* No commitment when adjudication takes place after order of commitment. Form 238.

21. Where a judgment-debtor is arrested, he may file in the county court within the district of which he is in custody, an affidavit as mentioned in the last preceding rule, and give the notice to the judgment-creditor thereof, as therein required, and thereupon the judgment-debtor shall be discharged out of custody upon the certificate of the registrar of that court. *See p. 247.* Discharge of bankrupt judgment-debtor. Form 239.

22. An order of commitment made under the Debtors Act, 1869, shall be according to the form in the schedule, and Form of order of

commit-  
ment.  
Forms 41  
and 237.

shall, on whatever day it may be issued from the registrar's office, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer. *See p. 244.*

Payment on  
arrest.

23. When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the order as that, on the payment of which, he may be discharged; and on receiving such amount the bailiff shall discharge the defendant, and shall within twenty-four hours after receiving such amount pay over the same to the registrar of the county court of which he is an officer. *See p. 245.*

Payment  
in prison.

24. The sum indorsed on the order of commitment, as that upon payment of which the prisoner may be discharged, may be paid into the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is, or into the foreign court into which it has been re-issued under s. 104 of the County Courts Act, 1846. Where it is paid to the registrar, he shall sign and seal a certificate of such payment, and upon receiving such certificate by post or otherwise, the gaoler, in whose custody the prisoner shall then be, shall forthwith discharge such prisoner. And where it is paid to the gaoler, he shall, upon payment to him of such amount, together with costs sufficient to pay for transmitting such amount to the court under the order of which the prisoner was committed, by post-office order, sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs. *See p. 246.*

Form of  
certificate of  
payment.  
Form 9,  
Appendix F.  
Costs on  
default of  
appearance  
of a judg-  
ment-  
creditor.

25. A certificate of payment by a prisoner shall be according to the form in the schedule. *See p. 246.*

Costs of  
enforcing a  
judgment.  
32 & 33 Vict.  
c. 62, s. 5.

26. If a judgment-debtor appears at the return-day, but the judgment-creditor fails to appear, the judge may award costs to the judgment-debtor. *See p. 243.*

Service of  
order men-  
tioned in the  
three next  
following  
rules shall  
not be  
enforced  
until three  
days after  
order made.

27. All costs incurred by the plaintiff in endeavouring to procure or enforce an order or judgment shall be deemed to be due in pursuance of such order or judgment under section 5 of the Debtors Act, 1869, unless the judge shall otherwise order. *See p. 248.*

*Process other than Execution or Judgment Summons.*

28. On the application of the party entitled to the benefit of any order mentioned in the three next following rules, the registrar shall issue to the bailiff a copy of such order under the seal of the court, with a notice to the party to be bound indorsed thereon, and the bailiff shall forthwith serve the same upon the party to whom such notice is addressed, and no process shall issue to enforce any such order, unless by leave of the judge, until three days after the copy and notice shall have been served upon the party to be bound thereby, in the same manner as an ordinary summons may be served; but where the order is in the nature of an injunction, the registrar shall, if the party by whom it was obtained desires to have the same served by his solicitor, allow it to be so served. *See pp. 222, 307.*

29. Where an order has been made in any action or proceeding for the delivery up to any person of lands or tenements, goods or chattels, either as owner thereof, or to be sold, or to be held in possession until an order is made as to the disposition thereof, the registrar shall, upon the application of the person entitled to such possession, issue to the bailiff either a warrant of possession or warrant of assistance, as the case may require. *See pp. 222, 307.* Warrant of possession. Forms 214 and 215.

30. Where any breach of an order in the nature of an injunction shall have been made, the registrar shall, upon application by the party interested in the enforcement of such order, issue to the high bailiff, or to such person for service by solicitor, a notice under the seal of the court, requiring the person who shall have been guilty of the breach of the said order to appear at a court, to be held on a day to be named therein, to show cause why he should not be committed for contempt for having disobeyed the said order. *See pp. 222, 308.* Breach of an injunction.

31. Where any person acting in a fiduciary capacity is required by order to pay any sum of money in his possession or under his control, and does not pay the same, or where any person is required by any order to do an act within a certain number of days after service of the copy of the order, and such person shall not do such act within the time mentioned therein, the registrar shall, upon application by the party interested in the enforcement of the order, issue to the high bailiff, or to such person for service by his solicitor, a notice under the seal of the court, requiring the person who shall have neglected to obey the order to appear at a court, to be held on a day to be named therein, to show cause why he should not be committed for contempt in having neglected to obey such order. *See pp. 222, 242, 307.* Process of contempt in certain cases. Form 220.

#### *Proceedings on Judgment after Six Years.*

32. No warrant against the goods, or judgment summons, shall issue on a judgment more than six years old, unless some payment has been made by the judgment-debtor into court within twelve months previously, or unless by leave of the court, but no notice to the debtor, previous to applying for such leave, shall be necessary, and such leave shall be expressed on the warrant or summons under the seal of the court. *See p. 223.* No proceedings to be taken on a judgment after six years without leave of court.

33. When a female, sued as a single woman, obtains judgment on the ground of coverture, and is awarded costs, she may enforce payment of such costs in her own name. *See p. 223.* Judgment by married woman sued as a *femme sole*, how enforced.

### ORDER XX.

#### ACTIONS REMITTED FROM OR TRANSFERRED TO THE HIGH COURT OF JUSTICE.

1. Where any action is remitted by order of the High Court of Justice to a county court, the plaintiff shall lodge with the Remittance of actions

from High Court of Justice.

registrar thereof the order and the writ, and also a statement of the names and addresses of the several parties to the action, and their solicitors, if any, and a concise statement of the particulars, such as would be required upon entering a plaint, signed by the plaintiff or his solicitor, and the registrar shall thereupon enter the action for trial and give notice to the parties of the day appointed for such trial, by post or otherwise, ten clear days before such day, and shall annex to the notice to the defendant a copy of the particulars. *See pp. 254, 256, 260, 261.*

Defendant may proceed as if action originally brought in county court.

Order to be filed.

2. Upon being served with a notice of trial under the last preceding rule, a defendant may proceed in all things in the same way as if the action had been brought in the county court, and the notice so served upon him was an ordinary summons. *See pp. 255, 257, 260, 262.*

3. The registrar shall forthwith indorse on the order the date on which the same was lodged and file the same, and the action shall proceed in all things as if it were an ordinary action in the county court. *See pp. 254, 255, 256, 257, 260, 262.*

Special notice in action for libel or slander. Forms 61 and 62.

4. Where in any action for libel or slander remitted under section 10 of the County Courts Act, 1867, to be tried in a county court, the defendant intends to avail himself of the provisions of sections 1 and 2 of 6 & 7 Vict. c. 96, he shall give notice in writing of such intention, signed by himself or his solicitor, to the registrar five clear days before the day appointed for the trial of the action. *See pp. 142, 260.*

Transfer of action to High Court of Justice by order during progress of action under 28 & 29 Vict. c. 99, s. 9. Form 12, Appendix F.

5. If during the progress of any action upon any claim or title, or to obtain any relief, remedy, or redress which might respectively before November 1, 1875, have been the subject of a plaint or petition in equity, it shall be made to appear that the subject-matter of the plaintiff's claim exceeds the amount to which the jurisdiction of the court is limited, the judge, if requested, may forthwith make an order for the transfer of the action to the Chancery division of the High Court of Justice, but if not so requested the order shall not be made before fifteen days at least; and the registrar shall make and file a copy of such order, and shall transmit the order, by post or otherwise, to the proper officer of the Chancery division of the High Court of Justice, and shall also send notice, by post or otherwise, of the fact, to all parties and persons entitled to be served with a copy of the order. *See p. 299.*

Transfer to High Court of Justice under sect. 9 of 28 & 29 Vict. c. 99, where upon taking of accounts amount of jurisdiction of county court is

6. If during the progress of taking any accounts or making any inquiries in any action for any claim, right, redress, or remedy which might before the commencement of the Supreme Court of Judicature Act, 1873, have been enforced in equity, it shall appear to the registrar that the subject-matter of the action exceeds the amount to which the jurisdiction of the court is limited, he may, if he thinks fit, proceed with and complete the particular account or inquiry, but he shall at the next sitting of the court present a certificate of the state of the proceedings in the action, and if the judge shall



be of opinion that such excess exists, he shall make an order of transfer as under the last preceding rule. *See p. 300.* found to be exceeded.

7. Where any order is made by the high court or any division or judge thereof for the transfer of any proceeding from the county court to the high court under the 90th section of the Supreme Court of Judicature Act, 1873, or under section 3 of the County Courts Act, 1865, then, subject to such order, the record in such proceeding shall be transmitted by the registrar in the following manner. The registrar shall make and certify under his hand office copies of all entries of record in the books of the court, and shall forthwith transmit by post or otherwise such copies, together with all such documents as shall have been filed in the action to the proper officer of the high court. Such copies and the cost of transmission shall be paid for by the party on whose application the transfer has been made, and the registrar may require deposit of the costs of making such copies and transmission before making or transmitting the same. *See pp. 137, 298.* Transfer of proceedings to high court under sect. 90 of Judicature Act, 1873, or 28 & 29 Vict. c. 99, s. 3.

## ORDER XXI.

### INTERPLEADER.

1. Where any claim is made to or in respect of any goods or chattels taken in execution under the process of any county court, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the bailiff, such summonses shall be served in such time and mode as hereinbefore directed for an ordinary summons to appear to a plaintiff, and the case shall proceed as if the claimant were the plaintiff, and the execution-creditor the defendant; provided that where the claimant has not at the request of the bailiff made deposit in accordance with section 72 of the County Courts Act, 1856, the time of service may, if the high bailiff so desires, by leave of the judge or registrar, be such time as will obtain a speedy decision on the claim. *See p. 333.* Proceedings generally.

2. The claimant shall, five clear days before the return-day, deliver to the bailiff, or leave at the office of the registrar of the court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent of the amount thereof, and for what period, and in respect of what premises, the same is claimed to be due, and the name, address, and description of the claimant shall be fully set forth in such particular, and any money paid into court under the execution shall be retained by the registrar until the claim shall have been adjudicated upon: provided that by consent of all parties, or without such consent if the judge shall so direct, an interpleader claim may be tried, although this rule has not been complied with. *See pp. 234, 235.* Claim or damage.

3. Where the claimant to goods taken in execution claims damages from the execution-creditor or from the high bailiff for or in respect of the seizure of the goods, he shall in the particulars of his claim to the goods state the amount he Claimant to lodge particulars and grounds of claim.



claims for damages, and the grounds upon which he claims damages. *See p. 235.*

Claim of damages against high bailiffs.

4. Where an execution-creditor claims damages against a high bailiff arising out of the execution of any process, he shall, five clear days before the return-day, deliver to the high bailiff a notice of such claim, stating the grounds for, and amount of, such claim. *See p. 235.*

Payment into court of damages claimed under 30 & 31 Vict. c. 142.

5. Where a claim for damages under section 31 of the County Courts Act, 1867, is made against any high bailiff and execution-creditor, or either of them, they or either of them may pay into court money in full satisfaction of such claim for damages, and such payment into court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies, as by the practice of county courts they would respectively have if the proceeding had been an action in which the claimant was plaintiff, and the high bailiff and judgment-creditor defendants. *See p. 235.*

Interpleader summons.

6. Interpleader summonses shall be issued by the registrar, on the application of the bailiff, without leave of the court. *See p. 233.*

Whence issued.

7. Interpleader summonses shall be issued from the court of the district in which the levy was made, and the execution-creditor and claimant shall be summoned to such court. *See p. 233.*

Costs where decision against claimant.

8. Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, shall be decided against the claimant, the costs of the bailiff allowed by the judge shall be retained by him out of the amount levied, if the judge shall not otherwise order, but without prejudice to the right of the execution-creditor against the claimant for the sum so retained. *See p. 235.*

Where assignor disputes an assignment.

9. Where the defendant in an action brought by the assignee of a debt or *chose in action* has had notice that the assignment is disputed by the assignor, or any one claiming under him, or has had notice of any other opposing or conflicting claims to such debt or *chose in action*, he may, within five days of the service of the summons, apply to the registrar for a summons against the assignor or the person making such conflicting claim, and the registrar shall thereupon issue an interpleader summons according to the form in the schedule, returnable as soon as conveniently may be; and upon the return-day of such summons the court shall hear the case of the defendant and of the plaintiff in the action, and also of the assignor disputing such assignment or of the person making such opposing or conflicting claim, and shall give such judgment therein as shall finally determine the rights and claims of all parties, as if the same had been an ordinary action into which a third party had been introduced by counter claim. *See pp. 90, 236.*

Form 85.

Defendant in an action by assignee may pay money into court.

10. Where a defendant in an action brought by the assignee of a debt or *chose in action* has had notice as in the last preceding rule mentioned, and thinks fit to pay the debt and costs into court to abide its decision, he shall upon such payment into court give to the registrar the name of the person

against whose dispute of the assignment or conflicting claim he desires to be protected, and the registrar shall thereupon give notice to such person according to the form in the schedule, and on the return-day of the summons the judge shall determine the rights of the parties, and may if he thinks fit order the defendant to pay all or any part of the costs. *See pp.* 90, 237. Form 86.

## ORDER XXII.

## REPLEVIN.

1. In actions of replevin no other cause of action shall be joined in the summons. *See pp.* 21, 272. No other cause to be joined.
2. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken, and of the distress or other taking of which he complains. *See p.* 292. Particulars.
3. All actions of replevin in cases of distress for rent in arrear, or for *damage-feasant*, shall be tried in a summary way as other actions in the court holden under the authority of the County Courts Act, 1846, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms set forth in the schedule. *See p.* 273. Rent in arrear or *damage-feasant*.  
9 & 10 Vict. c. 95.  
Forms 186, 187.
4. Where the distress is for rent, or for any other claim for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant require, the court shall, if the action be tried without a jury, and the jury shall, if the action be tried with a jury, find the value of the goods distrained, and if the value be less than the amount of rent or otherwise of money in arrear, judgment shall be given for the amount of such value, but if the amount of the rent or such other sum of money in arrear be less than the value so found, judgment shall be given for the amount of such rent or other sum of money, and may be enforced in the same manner as any other judgment of the court. *See p.* 273. Where defendant succeeds in action where distress is for rent.  
Forms 186, 187.
5. Where the distress is for *damage-feasance*, and the defendant is entitled to judgment for a return, if the plaintiff require, the judge shall, if the action be tried without a jury, and the jury shall, if the action be tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damage so found. *See p.* 274. Where defendant entitled to a return in *damage-feasant*.
6. In all cases of replevin other than those arising out of a seizure by way of distress, the judgment for the defendant shall be for a return of the goods with or without costs. *See p.* 274. In other cases.

## ORDER XXIII.

## ARBITRATION.

1. Where a plaint is entered, the court may, with the consent of the parties, as well in cases within the ordinary jurisdiction of the parties, as well in cases within the ordinary jurisdiction. Practice in 9 & 10 Vict.

c. 95, s. 77.  
9 & 10 Vict.  
c. 95.  
Form 148.

diction of the court as in cases of agreement under section 23 of the County Courts Act, 1856, make an order for a reference, under the provisions of section 77 of the County Courts Act, 1846, before, upon, or after the return-day; and all the provisions in the last-mentioned Act contained as to references shall apply to a reference proceeding under such an order: provided that the same fees shall be paid as would have been payable on a judgment by default. *See p. 170.*

## ORDER XXIV.

### ATTACHMENT OF DEBTS.

Where plaintiff desires defendant to be examined at the trial as to the debts due to him he must give notice.  
Form 98.

Examination of defendant as to debts owing to him.

Form 99.

Order thereupon.

Proceedings against garnishee.

30 & 31 Vict.  
c. 142, s. 1.

1. Where a plaintiff is desirous that the defendant, if the defendant shall have judgment given against him, shall be orally examined forthwith after the judgment shall have been given, as to what debts are due and owing or accruing to him, the plaintiff shall, before the action is called on, lodge with the registrar a statement in writing of the name, address, and description of the person or persons whom he considers are debtors to the defendant and who *quoad* such debts are within the jurisdiction of the court. *See p. 237.*

2. Where such a statement has been lodged, the defendant, if he shall have had judgment given against him, may then be examined before the court at the request of the plaintiff as to any debts due, owing, or accruing to the defendant from any persons mentioned in the statement, and if any such person be then present, he may be required forthwith, if he admits the debt, to show cause why he should not be ordered to pay into court, for the benefit of the judgment-creditor, such debts or so much thereof as will satisfy the judgment debt, and the court may make an order for the payment of such debts, or so much thereof as will satisfy the judgment debt, and such order shall be entered in the minute-book, and may be enforced in like manner as any order made in any action in the court; and where such person pays the money as ordered, he shall not be liable for any costs, and an entry of the payment shall be made in the "cash-book" and "ledger." *See p. 238.*

3. A plaintiff who has not lodged such statement, or a defendant who has obtained judgment against a plaintiff, may at any time after the judgment, upon lodging with the registrar of the court in which the judgment was given an affidavit stating the fact of the judgment, and of its being unsatisfied, and that a third person (hereinafter called the garnishee) is indebted to the judgment-debtor, and is *quoad* such debt within the jurisdiction of the court, and could be sued therein without leave or by leave under section 1 of the County Courts Act, 1867, may enter a plaint to obtain payment to him of the amount of the debt due to the judgment-debtor from the garnishee, and where the garnishee is not *quoad* such debt within the jurisdiction of the court, the judgment-creditor, upon lodging a certificate of the judgment and a copy of the said affidavit with the registrar of the court in the district of

which the garnishee resides or carries on business, may enter a plaint therein. *See p. 238.*

4. The summons on the plaint shall be personally served on the garnishee, and when so served it shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment-debtor. *See p. 238.*

Service of  
garnishee  
summons.

5. Where the garnishee shall pay the money into court five clear days before the return-day, he shall not be liable for any costs incurred by the judgment-creditor. *See p. 238.*

No costs  
where  
garnishee  
pays.

6. Upon the return-day the court shall determine as to the liability of the garnishee, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make an order or orders in accordance with such determination. *See p. 239.*

Order on  
trial.

7. Where the court in which the garnishee is sued is not the court in which the judgment upon which he is garnished was given, the registrar of such court shall send a certificate of the order of his court to the court in which such judgment was given, and of payment made, if any, before or after the return-day. *See p. 239.*

Certificate  
of order and  
payment to  
be sent.  
Form 33.

## ORDER XXV.

### PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

1. In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the court shall otherwise order, be awarded in favour of the defendant, and shall be levied *de bonis propriis*. *See p. 249.*

Costs where  
plaintiff  
fails.

2. Where an executor or administrator, plaintiff or defendant, shall not appear on the day of hearing, the provisions of sections 79 and 80 of the County Courts Act, 1846, and of section 10 of the County Courts Act, 1850, shall apply respectively, subject to the rules applicable to executors or administrators suing or sued. *See p. 249.*

Costs on  
non-  
appearance  
of either  
party.

3. A party suing an executor or administrator may charge in the summons, that the defendant has had assets, and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted. *See p. 249.*

Devastavit.

4. In all cases where the defendant is so charged in the summons, if the court shall be of opinion that the defendant has wasted the assets, the judgment shall be that the debt or damage and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*; and the non-payment of the amount of the demand immediately on the court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable. *See p. 250.*

Judgment  
where  
devastavit  
charged.  
Form of  
judgment,  
139; forms  
of warrants,  
146, 147.

5. Where a defendant sued as an executor or administrator admits his representative character, and only denies the

Judgment  
where

representa-  
tion  
admitted.  
Form 140.

demand, if the plaintiff prove it, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*. See p. 250.

Judgment  
where  
representa-  
tion  
admitted  
and admi-  
nistration  
alleged.  
Form 141.

6. Where such defendant admits his representative character but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of assets, *quando acciderint*; and the plaintiff shall pay the defendant's costs of proving the administration of assets. See p. 250.

Judgment  
in like case  
where admi-  
nistration  
not proved.  
Form 142.

7. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*. See p. 250.

Judgment  
where admi-  
nistration  
proved.  
Form 143.

8. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets. See p. 250.

Judgment  
where admi-  
nistration  
not proved  
and no other  
defence  
established.  
Form 144.

9. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does *not* prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if so much assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*. See p. 251.

Judgment  
on assets  
*quando acci-  
derint*.  
Form of  
judgment,  
145; of war-  
rant, 147.

10. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff or his personal representative may issue a summons in the form according to the schedule, and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the court may order that the debt, damages, and costs be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*: provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in rule 3, and the provision of rule 4 shall apply to such inquiry; and the court may, if it appear that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, &c., et si non, de bonis propriis*. See p. 251.

11. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases. *See p. 251.*

Judgment  
on de-  
fendant's  
admission.

12. In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fail as to any of his defences, the judgment shall be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis.* *See p. 251.*

Judgment  
in other  
cases.

## ORDER XXVI.

### TRANSMISSION OF PROCESS AND PROCEEDS OF WARRANTS TO AND FROM FOREIGN DISTRICTS.

1. In all cases of warrants, whether against the goods or the person, to be executed in a foreign district, the registrar of the foreign court shall immediately on the receipt of the warrant enter it in "The Foreign Executions Re-issued Book." *See p. 228.*

Entry of  
warrants to  
be executed  
in a foreign  
district.

2. Where, by virtue of any warrant sent to a foreign district, any money shall have been received by the bailiff of the foreign court, such bailiff shall, within twenty-four hours from the receiving of such money, pay over the same to the registrar of the foreign court, and shall, unless an interpleader summons as to such money be pending, make a return in writing of the amount received; and in the case of a levy having been made, the bailiff shall state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and pay over to the registrar of the foreign court the amount levied, less such charges and fees; and the registrar of the foreign court shall certify in the said return the amount paid into court, and the correctness of the said charges, and shall account for and pay over such amount to the treasurer of his court at such time as the treasurer shall require; and the high bailiff shall thereupon transmit such return to the high bailiff of the home court, as directed by section 104 of the County Courts Act, 1846, and such latter bailiff shall, within twenty-four hours from the receipt of such return, deliver the same to the registrar of his court, who shall thereupon pay out of any moneys in his hands, to the plaintiff in the action, the amount certified in such return to have been received by the registrar of the foreign court, as the proceeds of the execution, and shall enter in a book the amount so certified in the form set forth in the schedule, and the registrar of the home court shall file such return, and the registrar shall be allowed by the treasurer of his court, at his audit, the amount so paid. *See p. 229.*

Accounting  
for and trans-  
mission of pro-  
ceeds levied  
in foreign  
district.

9 & 10 Vict.  
c. 95, s. 104.

3. Where by virtue of any order of commitment to be executed in a foreign district any money shall be paid into the court of such district, the registrar shall transmit a certificate to the registrar of the home court of the amount so paid in,

Certificate  
of money  
paid into  
court.



and shall account for and pay over the amount to the treasurer of his court at such time as the treasurer shall require; and the registrar of the home court shall upon the receipt of the certificate pay out of any money in his hands to the judgment-creditor the amount so certified to have been received by the registrar of the foreign court, and shall enter the same in the book mentioned in the last preceding rule, and shall file the certificate, and he shall be allowed by the treasurer of his court, at his audit, the amount so paid. *See p. 246.*

## ORDER XXVII.

## FUNDS (COUNTY COURTS ACT, 1865).

Payment  
into county  
courts.  
28 & 29 Vict.  
c. 99.

1. Where a party is directed to pay money into court under the County Courts Act, 1865, he shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge, pay the same into a post-office savings bank, in accordance with the provisions of section 26 of the County Courts Act, 1867. *See p. 310.*

Entry of  
payments.

2. The registrar shall enter in the "cash-book" and "ledger for equitable proceedings under the County Courts Act, 1865," all sums so paid to the account of the proceeding, in which it is paid, and where the interest of any fund, paid into a post-office savings bank, has been directed to be paid to any person, the registrar shall pay the same half-yearly out of any general moneys in his hands. *See p. 310.*

Post-office  
savings  
book to be  
trans-  
mitted.  
Form 234.

3. In the first week of January in each year the registrar shall transmit to the postmaster-general his post-office savings bank book, and upon its return he shall send a letter, according to the form in the schedule, to the Commissioners of the Treasury requesting them to authorise the postmaster-general to allow him to draw out a sum equal to the interest which he may have paid to persons during the then past year, and shall apportion the same and carry the proportion to the account of each fund on which he has paid interest as aforesaid. *See p. 311.*

Mode of  
withdrawing  
moneys  
from post-  
office  
savings  
bank.  
Form 234.

4. The registrar, wherever he shall be directed by the court to draw out of a post-office savings bank the fund or part of the fund in any suit or matter, shall send a letter to the Commissioners of the Treasury according to the form in the schedule. *See pp. 311, 315.*

Interest to  
be appor-  
tioned.

5. Where money has before the 1st of January, 1868, been invested in stocks and the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall re-invest the dividend in the same names, except where and so far as the court shall otherwise direct, and shall apportion the amount so re-invested in his books to the right accounts. *See p. 311.*

Order for  
payment of  
money  
under sect. 5  
of 29 & 29  
Vict. c. 99.

6. Where any order has been made upon any person to pay to the paymaster-general in Chancery any sum of money under section 5 of the County Courts Act, 1865, such order shall be drawn up by the registrar and issued to the bailiff of the



court ; by whom the same shall be served personally upon the person ordered to make the payment. *See p. 310.*

7. Where default shall be made in the production of the certificate of the paymaster-general in Chancery, the registrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with section 5 of the County Courts Act, 1865. *See p. 310.*

Warrant of execution on default under last section.

8. Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value 200*l.*, or 10*l.* in annual payments, she shall be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement, and if the court think fit to make such settlement, and in all cases where the married woman is under age, shall by its judgment make such settlement accordingly : provided always, that the court may, if it thinks fit, order such settlement to be prepared by counsel and settled by the judge. *See p. 311.*

Examination of married woman interested in fund.

## ORDER XXVIII.

### NEW TRIAL.

1. An application for a new trial, or to set aside proceedings, may be made and determined on the return-day, if both parties be present, or such application may be made at the first court holden next after the expiration of twelve clear days from such return-day : provided the intended applicant do, seven clear days before the holding of such court, deliver to the registrar at his office, and also give to the opposite party by serving the same personally on such party, or by leaving the same at his place of abode or place of business, a notice in writing, signed by himself or his solicitor, stating that such an application is intended to be made at such court, and setting forth shortly the grounds of such intended application ; but such notice shall not operate as a stay of proceedings unless the judge shall otherwise order ; and if any money paid into court under any execution or order in the action shall not have been paid out, when such notice in writing shall be given to the registrar, the registrar shall retain the same to abide the event of such application, or until the judge shall otherwise order ; and if no such application be made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the judge shall otherwise order ; and if such notice be not given in manner aforesaid, or such application be not made at the court mentioned in the notice, no application for a new trial or to set aside proceedings shall be subsequently made, unless by leave of the judge, and on such terms as he shall think fit : provided that this rule shall not apply to cases falling within the provision of section 80 of the County Courts Act, 1846. *See pp. 196, 197.*

Application for new trial.

2. The judge may, in his discretion, make it a condition of granting a new trial, that it shall take place before a jury, although the former trial did not take place before a jury.

New trial may be had before a jury.

*See pp. 160, 197.*

Application  
to set aside  
nonsuit.

3. Where a plaintiff desires to set aside a nonsuit, he shall proceed within the same time, give the same notice, and be subject in all respects to the same conditions, and follow the same practice as though judgment had been given for the defendant. *See pp. 184, 196.*

## ORDER XXIX.

### APPEAL BY SPECIAL CASE.

Notice of  
appeal.

1. Any party dissatisfied with the judgment, order, or direction of the court in point of law, or upon the admission or rejection of evidence, may, before the rising of the court on the day on which judgment was pronounced, deliver to the registrar a statement in writing, signed by him, his counsel or solicitor, containing the grounds of his dissatisfaction; and in the event of no such statement being delivered, the successful party may proceed on the judgment unless the judge shall otherwise order; but the judge may direct proceedings to be taken on the judgment notwithstanding such statement has been delivered: provided that the party so dissatisfied may appeal on grounds different from those contained in such statement, and although he shall not have delivered any such statement. *See p. 202.*

Form 5,  
Appendix F.

Time for  
notice.

2. The ten days within which such notice of appeal may be given shall be exclusive of the day of trial. *See p. 203.*

Form of  
notice.  
Form 6,  
Appendix F.

3. The notice of appeal shall be in writing and shall state the grounds on which the party appeals, and shall be signed by the appellant, his solicitor or agent, and such notice shall be sent to the registrar as well as to the successful party, by post or otherwise. *See p. 203.*

Notice not  
a stay of  
execution.

4. The notice of appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, unless the judge shall otherwise order, but the registrar shall detain the proceeds of any execution which may then be in or may come into his hands pending such appeal, to abide the event of such appeal, unless the judge shall otherwise order. *See p. 204.*

Case to be  
presented  
to judge.

5. The appellant shall prepare the case for appeal, and all cases on appeal shall, unless the judge shall otherwise order, be presented to him for signature at the court held next after the parties shall have agreed upon the same; and if the judge approves thereof it shall be signed by him, and sealed with the seal of the court; but where the judge does not approve of the case submitted to him, both parties shall be summoned to attend him where and when the judge shall appoint, and at the place and time so appointed both parties shall be heard as to the form of the case, and the judge shall finally settle and sign the same, and it shall then be sealed by the registrar. *See p. 206.*

Where  
parties do  
not agree,  
judge to  
settle case.

6. Where the parties do not agree upon the form of the case to be stated, the appellant shall lodge with the registrar the draft case prepared by him, and the registrar shall give notice to the parties that the same has been so lodged, and will, on a

day to be named in the notice, be presented to the judge for his signature, and on such day the parties may appear before the judge, who shall determine the form of the case, and finally settle and sign the same, and it shall then be sealed by the registrar. *See p. 207.*

7. When the case shall be so signed and sealed, a copy thereof shall be deposited with the registrar, and another sent by post or otherwise by the appellant to the successful party within three clear days next after the time of signing and sealing the same, and if the appellant do not comply with this rule the successful party may proceed upon the order, notwithstanding proceedings have been stayed by order of the judge, unless the judge shall otherwise direct. *See p. 208.*

Copy of case to be deposited with registrar.

8. The appellant shall, within three days next after the case has been signed and sealed, transmit the same with a copy thereof under the seal of the court, by post or otherwise, to the proper officer of the High Court of Justice, and shall give notice, by post or otherwise, to the successful party that he has done so; in default whereof the successful party may proceed on the judgment as if no appeal had been made, and shall, on the application to the court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings: provided that, instead of proceeding on such judgment, the respondent, if he think fit, may, within twenty-eight clear days from the signing and sealing of the case, transmit it in the manner prescribed, and give the like notice to the appellant of such transmission. *See p. 208.*

Case to be transmitted to high court.

9. When the court of appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the registrar of the county court, and upon being so deposited such judgment shall be filed and may be enforced as if it had been made by the county court. *See p. 212.*

Judgment of court of appeal to be deposited.

10. A new trial, in pursuance of the order of the court of appeal, shall be entered for trial at the county court which shall be holden next after twelve clear days from the time when such order or office copy thereof shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the county court itself. *See p. 212.*

New trial.

11. If the order of the court of appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the county court. *See p. 213.*

Proceedings on judgment of court of appeal.

### *Appeals by Motion.*

12. The foregoing rules in this order shall not apply to appeals by motion, but such appeals may be had under the provisions of section 6 of the County Courts Act, 1875. *See p. 202.*

Appeals. 38 & 39 Vict. c. 50.

## ORDER XXX.

## SECURITY.

- Security by bond. 1. In all cases where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and the registrar, at his office, notice of the proposed sureties according to the form in the schedule, and the registrar shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee, that should he have any valid objection to make to the sureties, or either of them, that it must then be made. *See p. 216.*
- Form 47. 2. The sureties shall make an affidavit of their sufficiency according to the form in the schedule, unless the opposite party shall dispense with such affidavit. *See p. 216.*
- Affidavit of sufficiency. Form 48. 3. The bond shall be executed in the presence of the judge or registrar, or a commissioner of the Supreme Court of Judicature. *See p. 216.*
- Execution of bond. 4. Where a party makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made. *See p. 217.*
- Deposit in lieu of bond. 5. In all cases where the security is by bond, the bond shall be deposited with the registrar until the action be finally disposed of. *See p. 217.*
- Bond to be deposited. 6. No registrar, deputy registrar, registrar's clerk, bailiff, broker, or other officer of the court, shall become surety in any case where, by the practice of the court, security is required. *See pp. 218, 341.*
- Officers not to be surety.

## ORDER XXXI.

## PROCEEDINGS UNDER THE TRUSTEES RELIEF ACT, TRUSTEE ACTS, AND MAINTENANCE AND ADVANCEMENT OF INFANTS.

- 28 & 29 Vict. c. 99, s. 1 (5) & (6). Form of affidavit under s. 24 of 30 & 31 Vict. c. 142. 1. Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any county court, under section 24 of the County Courts Act, 1867, shall file with the registrar of the county court having jurisdiction in the matter an affidavit, entitled *In the Matter of the last Act, and of the particular trust, and setting forth:*
1. His own name, address, and description :
  2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund :
  3. The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the court :
  4. A short description of the trust or of the instrument creating it :

5. The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to the fund, to the best of the knowledge and belief of the trustee :

6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred, or security deposited, as the court may think proper to make or direct. *See p. 313.*

2. The affidavit may be according to the form in the schedule, with such variations as each particular case may require. *See p. 313.*

Form in schedule. Form 226.

3. Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was filed, and when such affidavit shall be so indorsed it shall be taken for all purposes to have been duly filed on the date so indorsed thereon. *See p. 313.*

Memorandum of filing to be indorsed.

4. The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate entitled In the Matter of the County Courts Act, 1867, and of the particular trust, and under the seal of the court, certifying that the affidavit has been filed, and such certificate may be according to the form in the schedule, with such variation as each particular case may require. *See p. 313.*

Certificate of filing may be given.

Forms 228 and 229.

5. In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, pay the money into a post-office savings bank, under section 24 of the County Courts Act, 1867, and obtain from the officer of the bank a receipt for the same, and shall forthwith leave the said receipt with the registrar, and the registrar shall accordingly indorse thereupon a memorandum of the day on which the same was received by him, and when such receipt shall be so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon. *See p. 313.*

Money may be paid into post-office savings bank. Sect. 24 of 30 & 31 Vict. c. 142.

5. In the case of stocks, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, transfer the stocks into the names of the treasurer and registrar of the county court mentioned in the said certificate, in trust to attend the orders of the court, and shall forthwith leave the transfer ticket with the registrar, and the registrar shall immediately indorse thereon a memorandum of the day on which the same was received by him, and when such transfer ticket shall be so indorsed it shall be taken for all purposes to have been duly recorded on the day so indorsed thereon. *See p. 313.*

Transfer of stock.

7. In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the name of the treasurer and registrar, in trust to attend the orders of the court, and the registrar shall immediately indorse on the affidavit a memorandum of the day on which the security was deposited with him. *See p. 313.*

Deposit of security.

8. The registrar shall, within twenty-four hours after the Notice of

deposit of security. deposit of the security, send notice thereof by post to the treasurer of the court, stating therein the particulars of the deposit, which notice may be according to the form in the schedule, with such variations as each particular case may require. *See p. 313.*

Form 233.

Transfer or deposit where no treasurer. 9. Where there is a county court in which there is not a treasurer, the transfer or deposit shall be made into the name of the registrar and of the superintendent of the county court department of the Treasury for the time being. *See p. 313.*

Certificate of payment, transfer, or deposit to be given.

10. Immediately after the recording of the receipt or transfer ticket, or the deposit of the security, the registrar shall give to the persons paying in the said money, or transferring the said stocks or depositing the security, an acknowledgment or certificate of such payment or transfer or deposit, and such acknowledgment or certificate may be according to the form in the schedule, with such variations as each particular case may require. *See p. 314.*

Forms 230 and 231.

Entries to be made in Equity Proceedings Book.

11. Immediately after the recording of the receipt or transfer ticket, or giving a certificate of deposit of security, the registrar shall cause an entry to be made in the book heretofore called the "Suits and Proceedings in Equity Book" of the title of the particular trust, and the amount of money or stock paid or transferred, or security deposited, and the names and addresses of the person or persons making such payment, transfer, or deposit, and the names of every person stated in the affidavit to be or to claim to be interested in or entitled to such money or stock, and their addresses and descriptions, as given in the affidavit; and the registrar shall forthwith, by post, send to each of such last-mentioned persons, to the addresses given in the affidavit, a notice of the said payment, transfer, or deposit, which notice shall be under the seal of the court, and may be according to the form in the schedule, with such variations as each particular case may require. *See p. 314.*

Form 232.

Petition by person interested in funds in court.  
Form 227.

12. Any person interested in or entitled to funds in court, or (if need be, but not otherwise) the trustee, who desires the directions of the court as to the investment, paying out, or distribution of the fund or income thereof, may file a petition setting forth shortly the particular trust in which he applies, and the substance of the order he seeks to obtain, and if the nature of the case require it, he shall give full particulars of his claim, and of the relief or remedy to which he claims to be entitled. The court, in adjusting the costs of the action, shall inquire at the instance of any party into any prolixity, and shall order the costs occasioned by such prolixity to be borne by the party chargeable with the same. *See p. 314.*

Order for service of notice of application on trustee.

13. Where the application shall relate to the capital of the fund in court, the trustee and all persons interested in such fund must be served with the petition, unless the court shall otherwise direct; and where the application relates to the income only of the trust fund, the trustee only shall be served with the petition, unless the court shall otherwise direct. *See p. 314.*

Trustee

14. Where a trustee shall have availed himself of the pro-



visions of section 24 of the County Courts Act, 1867, without sufficient reason, the judge may direct such trustee to bear his own costs, and pay the costs of any other parties, or to bear and pay any part of such respective costs, as the judge shall think fit. *See p. 315.*

15. Subject to, and in accordance with the foregoing rules, all proceedings under the 5th and 6th clauses of the 1st section of the County Courts Act, 1865, shall be commenced by filing a petition. *See p. 312.*

16. Petitions shall be filed and shall be delivered at the office of the registrar seven days before the sitting of the court at which the petition is to be heard or application made. *See p. 312.*

17. Upon the filing of any such petition, the registrar shall issue the copies under the seal of the court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself and under the seal of the court, informing them of the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient. *See p. 312.*

18. The bailiff of the court shall, four days at least before the hearing, serve all copies of such petitions and notices. *See p. 312.*

19. Upon the trial of any claim under this order, unless the judge shall otherwise direct, the facts relied upon in support of or in opposition to such claim shall be proved by affidavit. *See p. 312.*

20. Where the judge makes an order upon such petition the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order. *See p. 312.*

21. The preceding rules relating to proceedings which prior to November 1, 1875, would have been commenced by a plaint in equity shall, in all cases where they are applicable, be construed as extending to proceedings under this order. *See p. 312.*

## ORDER XXXII.

### ASSESSORS (COUNTY COURTS ACT, 1875).

1. The registrar of each county court shall, from time to time, at the request of the judge, submit to him the names of as many persons as the judge may direct, whom, having regard to the nature of the ordinary business of the circuit and to their fitness from ability and reputation, he believes to be qualified to act as assessors under section 5 of the County Courts Act, 1875, and the judge shall from the names so submitted frame a list of persons to act as assessors for each court within his circuit. *See p. 163.*

2. The registrar shall apply to such persons as the judge may approve to know if they are willing to act as such assessors. On approval of a list by



judge to obtain consent of assessors to act when summoned.

List of assessors to be hung up in court and office.

Resignation of assessors, how to be made.

Name of assessor resigning to be removed from list.

Remuneration of assessors.

Application to judge to act with assessors.

Application to be forwarded to judge and assessors to be summoned if judge approves.

Where opposite party does not accept the assessors proposed.

Where the party served does not accept the proposed appointment.

sors and to attend any court they may be summoned to attend a reasonable time beforehand. *See p. 163.*

3. When the judge has completed the list of assessors, the registrar shall cause a printed list of their names in alphabetical order to be hung up in the court and office. *See p. 163.*

4. Every assessor named in the printed list shall continue to be an assessor until a new list of assessors shall have been framed and approved as aforesaid, or until he shall have given to the registrar notice in writing that he is unwilling to act as an assessor from and after a day to be named therein. *See p. 164.*

5. Upon the receipt of such notice the registrar shall remove the name of such person from the list of assessors. *See p. 164.*

6. Every person named in such list shall receive for each day's attendance 1*l.* 1*s.* or 2*l.* 2*s.* according as the subject-matter of the action does or does not exceed 20*l.* in value, together with such sum, if any, for his expenses as the judge may order. *See p. 164.*

7. A party who desires assessors to be summoned to assist the judge shall file an application therefor according to the form in the schedule, giving the names of the assessors he wishes to be summoned, and if he shall have obtained the consent of the other party to the assessors named he shall file such consent with his application. *See p. 162.*

8. Upon receipt of such application the registrar shall forward a copy of the same to the judge, who, if he sees fit, shall return the same with his approval, and thereupon the registrar shall forthwith summon the assessors named. If the judge shall not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties. *See p. 162.*

9. Where the party so applying does not file with his application the consent of the other party to the appointment of the assessors proposed by him, the registrar shall, after obtaining the consent of the judge to the appointment of assessors as prescribed in the preceding rule, forthwith cause to be served on the other party notice of the application according to the form in the schedule, and the party so served shall, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them, and shall therein give the names of such assessors as he is willing should be summoned. *See p. 162.*

10. Where the party served with the notice mentioned in the preceding rule does not accept the proposed appointment he shall forthwith, after receipt of such notice, inform the registrar in writing of his non-acceptance and of the reasons thereof, and the registrar shall thereupon fix a time and place for hearing such objection and selecting the assessors to be summoned. Such objection may be heard either on the return-

day of the summons or before the judge acting under the powers conferred on him by section 4 of the County Courts Act, 1875, or by direction of the judge before the registrar. Notice of the time and place at which the objection will be heard shall be given to all parties interested. On the hearing such order shall be made as the judge or registrar shall think just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting. When assessors are appointed they shall be summoned in the manner hereinbefore prescribed. *See p. 163.*

11. If at the time and place appointed for the trial the assessors summoned do not appear, the judge may either proceed to try the action, with the assistance of such one or more of the assessors, if any, as do appear, or, if none appear, without assistance, or he may adjourn the trial. *See p. 163.*

Where assessors or one of them fail to attend.

12. Every person requiring the judge to be assisted by assessors shall at the time of applying pay to the registrar the sum of 2*l.* 2*s.* if the amount claimed does not exceed 20*l.*, and 4*l.* 4*s.* if it does exceed that amount, and such payments shall be considered as costs in the action, unless otherwise ordered by the judge. *See p. 163.*

Payment on application for assessors by party.

13. Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the court. *See p. 163.*

Assessors' fees on adjournment.

### ORDER XXXIII. (*See p. 22.*)

#### ADMIRALTY ACTIONS.

##### *Sittings of the Court.*

1. The judge may try or partly try the action at any place within the Admiralty district of the court.

Where action may be tried.

2. Where application is made to the judge for the trial or part trial of an Admiralty action at a place in which a county court does not sit, the solicitor shall file a *præcipe* undertaking to provide at his expense a place to the satisfaction of the judge in which the action may be tried, and pay the necessary expenses of the court and officers so attending.

Under-taking by solicitor for expenses.

3. The days of the sitting of the court shall be those appointed for the transaction of the ordinary general business of the county court held in the city or town mentioned in the name of the court, or such other days as the judge may from time to time appoint for the trying of an Admiralty action where from the detention of a vessel or otherwise a prompt determination of the action is desirable.

Sittings of the court in Admiralty.

##### *Institution of Action.*

4. A solicitor desiring to commence an Admiralty action shall file a *præcipe* which shall state the nature of the action, the name, address, and description of the party in whose behalf it is instituted, the name of the solicitor, and an address within

Commencement of action.

three miles of the court-house at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him, and it shall also state the name of the owner or owners or other person against whom the action is instituted, or it shall state that the action is instituted against the vessel or other property to which the action relates.

Notice of commencement of action to be given to consul in certain cases.

5. In an Admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the consul or vice-consul of the state to which the vessel belongs, if there be one resident within the district of the court, and a copy of the notice shall be annexed to the *præcipe*.

#### *Summons.*

Summons.

6. Immediately upon the filing of the *præcipe* the registrar shall issue a summons for service by the solicitor, or if so required, by the bailiff of the court.

Service of summons.

7. Where the vessel or property to which the action relates is within the district, the summons may be served by delivering it to the person who is at the time of service apparently in charge of the vessel or property, or if there is no person in charge, by nailing it on the main mast or the single mast of the vessel; and in other cases the summons must be served personally upon the defendant, unless the judge, or in his absence the registrar, shall upon facts duly verified upon affidavit allow of substituted service.

#### *Appearance in Admiralty Actions.*

Appearance.

8. A solicitor desiring to enter an appearance in an action shall file a *præcipe*, and thereupon an entry of his appearance shall be made in the Admiralty suits-book.

Contents of *præcipe*.

9. The *præcipe* shall state the name, address, and description of the party on whose behalf the appearance is entered, the name of the solicitor, and an address within three miles of the court-house, at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him.

Person claiming interest may intervene.

10. Any person claiming to have an interest in the vessel or property, whether cognisable by the court or not, may intervene for the purpose of having the case transferred to the High Court of Admiralty.

Appearance on arrest.

11. Upon the arrest of any vessel or property an appearance may be entered the same as upon the service of the summons.

Notice of day of hearing.

12. Where an appearance has been entered, the registrar shall, upon application by either plaintiff's or defendant's solicitor, give to each solicitor in the action, and where no appearance has been entered then to the plaintiff or his solicitor, a notice under the seal of the court, stating the day upon which the action has been directed by the judge to be heard.

#### *Arrest.*

Affidavit to be filed.

13. Where after the commencement of an Admiralty action,

it is desired to arrest any vessel or property, the solicitor must file an affidavit stating the facts which render it probable that it will be removed out of the jurisdiction of the court.

14. In an Admiralty action for necessities or for wages the national character of the vessel shall be stated in the affidavit. When nationality of vessel to be stated.

15. Where upon the filing of such affidavit the registrar, in the absence of the judge, is satisfied with the evidence, he may issue a warrant for the arrest and detention of the vessel or property, and where he is not satisfied he may require further evidence to be adduced. When warrant for arrest may issue.

16. A warrant of arrest may be executed on Sunday, Good Friday, or Christmas-day, as well as on any other day. When warrant for arrest may be executed.

#### *Release of Property.*

17. Where in an Admiralty action the amount sued for is paid into court, together with costs, or the security completed, or where the plaintiff's solicitor usually requires it, the registrar shall deliver to the solicitor an order directed to the high bailiff of the court, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the property, to release it forthwith. Release on payment into court.

18. Notwithstanding the last preceding rule, the property, in an Admiralty action for salvage, shall not be released until its value has been ascertained either by affidavit, by agreement, or by appraisement, save by consent of the plaintiff or his solicitor. Release in salvage action.

#### *Transfer of Action.*

19. Where an action is transferred to the High Court of Justice by order thereof, the registrar of the court, upon the service of the order of transfer, shall send by post the proceedings to the proper officer of such court. Transmission of proceedings on transfer by high court.

20. Where a court orders the transfer of an action to the High Court of Justice or to another court the registrar shall send by post the order, together with the proceedings, to the registrar of the High Court of Justice or to the court to which it is transferred. The like on transmission to high court.

#### *Second or Cross Action.*

21. Where it shall appear to the court that the plaintiff in an Admiralty action (hereafter called the second action), was or is the defendant in an action (hereafter called the first action) in another court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the court in which the first action was instituted, to hear and determine the second action, the judge may refuse the plaintiff in the second action his costs if he shall think fit. Costs in cross action may be refused.

22. Where a second or cross action for damage has been instituted by a defendant in an action for damage, and the second action has been instituted, by agreement or otherwise, in the court in which the first action was instituted, or has First and second actions may be tried together.

been transferred to the said court by order of any other court, the court may direct that both actions may be tried at the same time and upon the same evidence.

Proceedings on order against unknown defendant.

23. Where a judgment or order has been obtained against an unknown defendant, the vessel or property to which the action relates shall not be taken in execution, but it may be arrested and detained under the provisions of section 22 of the County Courts Admiralty Jurisdiction Act, 1868, or kept under arrest, if already arrested.

Proceedings on discovery of unknown defendant.

24. Where an order has been obtained in an action against an unknown defendant, and the name of the defendant is subsequently ascertained, the adverse solicitor may deliver to the registrar a præcipe stating the name, address, and description of the defendant, and thereupon the registrar shall issue to the solicitor, or if required to the bailiff for service a notice of the judgment or order, stating that if the defendant does not within four clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be sold in execution.

Service of notice on defendant.

25. The notice shall be served personally upon the defendant, unless the judge, or, in his absence, the registrar, shall upon facts duly verified upon affidavit, allow of substituted service.

#### *Execution against Vessel.*

Proceedings on execution against a vessel.

26. Where, under a warrant of execution, a vessel is seized, the high bailiff shall, before selling the same, cause an inventory and valuation thereof to be made by an appraiser, and the vessel shall not be sold for less than the appraised value thereof, except by order of the court, and 10s. per cent. on the appraised value of the vessel, with reasonable expenses for travelling and maintenance, if the vessel is beyond three miles from registrar's office, shall be allowed to the appraiser.

Proceeds of sale to be paid into court.

27. On the completion of the sale the high bailiff shall pay the proceeds arising therefrom into court, return the warrant, and file an account of the sale and of his fees thereon, signed by him, together with the certificate of appraisement signed by the appraiser.

Delivery of property to purchaser.

28. On the completion of the purchase the high bailiff shall deliver up the property to the purchaser, and if required so to do shall execute a bill of sale to him at the expense of the purchaser.

#### *Transfer of Sale.*

Proceedings on transfer of sale.

29. Where the vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court of Justice, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court of Justice, take possession thereof.

Application for transfer of proceeds for sale.

30. A solicitor desiring that the sale of any vessel or property should be conducted in the High Court of Justice, may at any time after judgment give security to the amount of 10l.,

and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the said court.

31. The registrar shall transmit such application to the judge for his order thereon, if the court be not sitting, and shall in any case certify on the application that the security for costs has been given. Applica-  
tion to be  
transmitted  
to judge.

*Notice of Defence in Collision.*

32. Where in actions for damage by collision the defendant intends to set up as a defence that the vessel was by compulsion of law in the charge of a pilot, he should give notice thereof to the adverse solicitor as soon after the service of summons as may be, and if he shall fail to give such notice the judge shall, in exercising his discretion as to costs, consider what effect the non-delivery of the notice has had in the action. Notice of  
defence in  
actions for  
damage by  
collision.

*Tenders.*

33. A solicitor desiring to make a tender shall give a notice to the adverse solicitor of the terms and amount of the tender, and shall pay the amount into court, and deliver a præcipe. Notice of  
proposed  
tender.

34. Within forty-eight hours from the payment the adverse solicitor shall file a notice stating whether he accepts or rejects the tender, and, if he shall not do so, he shall be deemed to have rejected it. Notice of  
acceptance  
of tender.

*Payment out of Court.*

35. Money ordered in an Admiralty action to be paid out of court may be paid to the solicitor without the production of a power of attorney from the party entitled to receive the money, unless the judge shall otherwise order. Payment  
out of court  
to solicitor.

36. Where more than one action has been instituted against a vessel or any property, and the same has been sold, the proceeds thereof shall be retained in court, to abide the decision of the court in the various actions, unless the judge shall otherwise order. Retainer of  
moneys in  
court where  
more than  
one action.

*Appraisement.*

37. The registrar may, on the application of either solicitor, and whether before or after judgment, order any property under arrest to be appraised. Appraise-  
ment.

*Records of the Court.*

38. The solicitors in an action, their clerks, and the parties themselves, may, while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action. Inspection  
of records.

39. In a pending action no person other than the solicitor or his clerk, or the party in the action, shall be entitled to inspect the records in the action without the permission of the registrar. Who  
entitled to  
inspection  
during  
pendency  
of action.

40. In an action which is terminated, any person may, on delivering to the registrar a præcipe, and on payment of the proper fee, inspect the records in the action. The like on  
termination  
of action.



*Copies.*Office  
copies.

41. Any person entitled to inspect any instrument or document in an action shall, on delivering to the registrar a *præcipe*, and on payment of the proper charges for the same, be entitled to an office copy thereof.

*Assessors.*Payment on  
application  
for assessors  
by party.

42. Every solicitor requiring the judge to be assisted by two assessors shall at the time of delivering the *præcipe* pay to the registrar the sum of 2*l.* 2*s.* if the amount claimed does not exceed 100*l.*, and 4*l.* 4*s.* if it does exceed that amount, and such payments shall be considered as costs in the action, unless otherwise ordered by the judge.

The like on  
requirement  
of judge.

43. Where the judge requires the assistance of two assessors, the above fees shall be paid by the plaintiff or his solicitor before the trial, and shall be costs in the action, unless otherwise ordered by the judge.

Assessors'  
fees on ad-  
journment.

44. Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the court.

Selection of  
assessors.

45. Upon the delivery of the aforesaid *præcipe* or upon the order of the judge as last aforesaid, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried, consider most capable of assisting the judge in trying and determining it, and shall send to each of such persons by post a summons in the form annexed.

Payment to  
assessors.

46. The registrar of the court shall pay to every assessor for each day's attendance and service in every action 1*l.* 1*s.* or 2*l.* 2*s.*, according as the amount claimed in the action does or does not exceed 100*l.*

## ORDER XXXIV.

## AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1875.

Interpreta-  
tion.  
38 & 39 Vict.  
c. 92.

1. When an appeal is made to the judge against an award made under the Agricultural Holdings (England) Act, 1875, the party prosecuting the appeal shall be called the appellant and the party supporting the award the respondent. *See p. 38.*

Statement  
of grounds  
of appeal to  
be filed.

2. The appellant shall, within four days after the delivery of the award, file a copy thereof, together with a concise statement in writing of his grounds of appeal, which shall contain the following particulars:—

1. If the appeal shall be made on the ground mentioned in section 36, sub-section 1, of the last-mentioned Act, a statement of the several objections to the validity of the award on which he relies:
2. If the appeal is on any of the grounds mentioned in sub-section 2 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been improperly awarded:



3. If the appeal is made on any of the grounds mentioned in sub-section 3 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been improperly withheld :

4. No ground of appeal shall be allowed at the trial unless the foregoing provision of this rule shall, in respect of such ground, have been complied with :

5. The names, in full, and address of the respondent and of the appellant, and of his solicitor, if the proceedings are commenced through a solicitor. *See p. 38.*

3. The registrar shall, within twenty-four hours after the filing of the concise statement, transmit a copy thereof by post to every respondent at the address furnished to him, accompanied by a notice requiring the respondent to comply with the provisions of the next following rule, according to the form in the schedule. *See p. 39.*

Copy of statement to be sent to respondent.

Form 240.

4. The respondent shall, within eight days after the transmission of the grounds of appeal to him, deliver to the registrar a statement in writing signed by himself or his solicitor disclosing the following matters :—

Respondent to deliver statement in reply.

1. Whether he disputes the validity in law of all, or any, and which of the grounds of objection to the award :

2. Whether he disputes the truth in fact of all, or any, and which of the grounds of appeal :

3. Whether he admits the validity in law and truth in fact of all, or any, and which of the grounds of appeal :

4. Whether he prays that the case may be remitted to be re-heard :

5. His name and address, and that of his solicitor if the statement be delivered through a solicitor. *See p. 39.*

5. The judge shall hear and determine the appeal, and the order thereupon may be enforced in the same manner as any other judgment of the court. *See p. 39.*

Order.  
Form 241.

6. Upon the receipt of the statement mentioned in the next preceding rule the registrar shall transmit a copy thereof and of the award and grounds of appeal to the judge, who shall, as soon as conveniently may be, appoint a time and place for the hearing of the appeal, and instruct the registrar to give notice thereof forthwith to the parties. *See p. 39.*

Copies of both statements to be sent to judge.

7. Every application for the appointment of a referee or umpire under section 22, sub-sections 6 and 9, or under section 23, sub-section 2, of the Act, shall be by summons sealed with the seal of the court, and returnable not less than seven days from the date thereof, except by consent. Such summons shall be taken out by the party applying, and shall be addressed to the other party, and shall direct the party summoned to attend at the judge's or registrar's chambers (as the case may be) on the return-day thereof, for the purpose of proceeding with the appointment asked for. Such summons shall be personally served by the applicant's solicitor. The appointment may be made by indorsement on the summons. *See p. 37.*

Proceedings in applications for referee or umpire.  
Form 12.

Appeal to  
high court.

8. All rules for the time being in force regulating the conduct of appeals by way of special case shall apply to appeals from the judge to the High Court of Justice, so far as circumstances will permit. *See p. 39.*

### ORDER XXXV.

#### PROCEEDINGS UNDER THE FRIENDLY SOCIETIES ACT, 1875.

Applica-  
tions to be  
made by  
plaint.  
38 & 39 Vict.  
c. 60.

1. All applications to the court by the trustees or authorised officers of a friendly society in respect of any of the matters mentioned in section 20 of the Friendly Societies Act, 1875, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way in which the society or the trustees or authorised officers thereof shall be plaintiffs and the person against whom the application is made defendant. *See p. 47.*

Particulars.

2. If the application be made by action without putting the bond in suit, the summons or the particulars annexed thereto shall state shortly the nature of the act required to be done or the neglect complained of. *See p. 47.*

Where  
property is  
required to  
be delivered  
up.

3. If the act required to be done be the delivering up of any property, the summons or the particulars annexed thereto, shall contain an intelligible description of the property required to be given up. *See p. 47.*

Reference  
under sect.  
22 to be by  
plaint.

4. Every dispute which shall be referred to the county court under section 22 of the said Act shall be so referred by action commenced by plaint and summons in the ordinary way in which the claiming or aggrieved member or other person shall be the plaintiff, and the society by such of the persons authorised by section 21 of the said Act to be sued on behalf of the society as the plaintiff shall elect to sue shall be defendant. *See p. 47.*

Summons.

5. The summons or the particulars annexed thereto shall state correctly the nature of the dispute referred, and the relief which the plaintiff claims. *See p. 47.*

### ORDER XXXVI.

#### COSTS.

Taxation of  
costs.

1. All costs shall be taxed by the registrar of the court, subject to the review of such taxation by the judge. *See pp. 190, 194.*

Taxation of  
costs under  
30 & 31 Vict.  
c. 142, ss. 7  
and 10.

2. In taxing the costs incurred in the High Court of Justice previous to the transmission of the action to the county court under sections 7 or 10 of the County Courts Act, 1867, the registrar shall tax the same according to the scale of costs and fees in use in such High Court of Justice. *See pp. 192, 257, 261.*

Costs of  
witnesses.

3. The costs of witnesses, whether they have been examined or not, may, unless otherwise ordered by the court, be allowed, though they have not been summoned, but their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule. *See p. 190.*

4. Seamen necessarily detained on shore for the purpose of the action shall be allowed such remuneration as the court may think reasonable compensation for their loss of time. *See p. 190.* Compensation to seamen.

5. Money paid into court on a judgment shall be appropriated first in satisfaction of the court fees and costs, and afterwards in satisfaction of the original demand. *See p. 188.* Appropriation of moneys paid into court.

6. Costs of warrants against the goods, whether executed or unexecuted or unproductive, shall be allowed against the defendant, unless the judge shall otherwise direct. *See p. 228.* Costs of warrants.

7. No possession fee shall be payable where an execution is paid out at the time of the levy; but if the officer shall necessarily remain in possession more than half an hour, and the execution shall be paid out on the day of levy, the possession fee for that day shall be charged. *See p. 227.* Possession fees. 9 & 10 Vict. c. 95, s. 106.

8. No appraisalment is to be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless where the goods are of a perishable nature, or are sold at the request of the party, before the expiration of four days or unless the goods are removed. *See p. 228.* Appraisalment.

9. Costs in actions under the County Courts Act, 1856, s. 23, shall be taxed according to the scale of taxation used in the High Court of Justice, so far as it is directly applicable, and where it is not so applicable, the principle of that scale shall be followed. *See pp. 17, 192, 274.* Taxation of costs under 19 & 20 Vict. c. 108, s. 23.

10. Costs in actions for the recovery of tenements and in actions of replevin may, where the fees of court are paid on 5*l.* or upwards, be allowed to solicitors upon the scale applicable to actions on contract where the amount claimed exceeds 20*l.*, if the judge shall so order. *See p. 192.* Costs in actions for the recovery of tenements and replevin.

11. In actions where the claim exceeds 20*l.* and the plaintiff recovers less than 20*l.*, he shall, if the judge shall so order, be entitled to recover costs, according to the scale relating to actions above 20*l.*, and the defendant, if successful, shall be entitled to recover costs according to the said scale, unless the judge shall otherwise order. *See p. 192.* Costs in actions where claim exceeds 20*l.*

12. Where from the amount, or from the nature of any defence or counter claim, the costs in an action for recovering or enforcing the same would be taxed upon a higher scale than that applicable to the action in which such defence or counter claim is made, then the costs shall be taxed upon such higher scale. *See p. 192.* Costs of counter claim.

13. Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of court fees and costs, he shall pay the difference, unless the reduction shall be caused by a set-off. *See p. 190.* Costs where plaintiff recovers less than he claims.

## ORDER XXXVII.

### PRACTICE.

1. A default summons may, at the request of the plaintiff, be exchanged, without fee, for an ordinary summons upon the Exchange of default summons.

former being filed in court within one month of its issue. *See p. 129.*

Notice of  
change of  
solicitor.  
Form 216.

2. Where any party changes his solicitor he shall give notice in writing of such change to the registrar, stating the name or firm and place of business of the new solicitor, and the registrar shall file the notice. *See p. 113.*

Copies of all  
proceedings  
or docu-  
ments to be  
paid for.

3. Copies of all proceedings or documents to be prepared by the registrar shall be prepared by him for any party requiring the same, upon payment of the costs of such copies when the order for the same is given. *See p. 221.*

Folios.

4. A folio is to comprise seventy-two words, every figure being counted as one word. *See p. 221.*

Payment  
out of court  
by cheque  
or post-  
office order.

5. Upon transmission of the plaint-note, with a request and a receipt (duly stamped where necessary) by a party to whose credit money has been paid into a court other than the court within the district of which such party resides or carries on business, the registrar of the court into which the money has been paid shall transmit such money to such party by registered post letter, enclosing a crossed cheque or a post-office order less the cost of remittance, and such remittance shall be at the risk of the said party. *See p. 189.*

Entry of  
plaint by  
letter.

6. Where a person desires to enter a plaint in a court within the district of which he does not reside, he may instead of attending in person or by agent at the court transmit, free of cost, to the registrar the following:—

- (1) A præcipe showing the name, address, and description of the plaintiff and defendants, the cause of action, and the amount claimed, and where the sum exceeds 40s., as many copies of the statement of the particulars or cause of action as there are defendants, and an additional copy to file.
- (2) A post-office order for the fees payable upon the entry of the plaint payable at the post-office of the court town.
- (3) An envelope addressed to himself, with a penny postage stamp thereon.

And upon the receipt of the above the registrar shall enter the plaint, and forward the plaint-note to the plaintiff in the addressed envelope. *See p. 115.*

Metropoli-  
tan courts.

7. For the purpose of the two foregoing rules the several districts of the Metropolitan courts shall be considered *inter se* as one district only. *See pp. 115, 189.*

Party may  
act by  
solicitor or  
agent.

8. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor or agent, if it can be legally done by an agent. *See pp. 112, 178.*

Service on  
solicitor  
deemed  
service on  
party.

9. Where a party acts by solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office, or sending the same to him by post, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it

would be delivered, except in cases where by these orders personal service upon a party is required. *See p. 112.*

10. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service. *See pp. 113, 165.* Practice on service by solicitor.

11. Any notice relating to any interlocutory proceedings may, by leave of the registrar, be served by the solicitor of the party requiring to effect such service; but the costs of such service, and proof thereof, shall not be allowed, except by order of the court. *See p. 113.* Notice of interlocutory proceedings may be served by solicitor.

12. Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than an ordinary or a default summons), notice, proceeding, or document cannot be made, the judge or registrar may, upon an affidavit showing grounds, order notice by advertisement or otherwise in lieu of such service. *See p. 220.* Notice in lieu of service.

13. The judge or registrar shall order in what newspaper any advertisements which may from time to time be ordered in any action or proceeding shall be inserted; and the expense of such advertisements shall be paid to the registrar by the party requiring the same before they are inserted. *See p. 220.* Newspaper advertisements.

14. All advertisements to be inserted in the "London Gazette" shall be transmitted by the registrar for insertion to the registrar of county court judgments in London. *See p. 220.* Advertisements for "London Gazette."

15. The judge, or in his absence the registrar, may order what party shall have the conduct of any action or proceeding. *See p. 113.* Conduct of action.

16. The judge or registrar may, upon such terms, if any, as he may think reasonable, enlarge or abridge any of the times fixed by these rules for taking any step or filing any document, or giving any notice, in any action or proceeding. *See p. 221.* Enlargement or abridgment of time.

17. Where actions shall be commenced in different courts by parties in the same interest, upon application by any of the parties they shall be transferred to the court in which the first plaint was entered, and shall there be proceeded with in the same way in all respects as if they had been commenced in that court. *See pp. 172, 298.* Transfer of actions commenced in different courts.

18. Where an estate has been ordered to be administered, creditors shall be entitled to interest in respect of debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of 4l. per cent. per annum, from the date of the order, and to costs of successfully proving such debts. *See p. 305.* Interest allowed to creditors in actions for administration.

19. Interest is to be computed on legacies after the rate of 4l. per cent. per annum, from the end of one year from the date of the testator's death, unless otherwise ordered, or a different rate or time of payment is directed by the will. *See p. 305.* Interest on legacies.

20. Any person who may be in custody, other than under an order under the Debtors Act, 1869, may be discharged by the registrar, upon giving to the party at whose instance he Discharge of person in custody.

Forms 224  
and 225.

was committed notice of his intention so to apply two clear days previous to his applying, and such discharge may be given according to the form in the schedule. *See p. 309.*

Where no  
forms in  
schedule.

21. All proceedings and documents may be in forms similar to the forms in the schedule to these rules, where the same are applicable; and in cases where no forms are provided, parties shall frame the proceedings or documents, using as guides those contained in the said schedule. *See p. 221.*

Judge  
acting for  
another.  
30 & 31 Vict.  
c. 142, s. 20.  
Form 4.

22. Where any judge of county courts acting for any other judge of county courts under section 20 of the County Courts Act, 1867, shall sign any order or other document, the registrar shall make a memorandum at the foot thereof according to the form in the schedule. *See p. 328.*

Notice of  
discontinu-  
ance.

23. Where a plaintiff is desirous of not proceeding in the action, he may give notice to the registrar and to the defendant by post that he will not proceed with the action, and after the receipt of such notice the defendant may apply for an order against the plaintiff for the costs incurred before the receipt of such notice, and of attending the court on the return-day to obtain such order. *See p. 132.*

Confession  
by defen-  
dant in  
action to  
recover  
land.  
Forms 157,  
158, and 175.

24. Any defendant in an action to recover lands may at any time before the return-day confess the action as to the whole or any part of the lands by signing in the presence of the registrar or one of his clerks, or of a solicitor of the supreme court, and attested by the person in whose presence it is signed, an admission of the title of the plaintiff to the lands or to the said part thereof, and of his right to the possession thereof; and the registrar shall upon the receipt of such admission forthwith give notice thereof by post to the plaintiff, and the judge may on the return-day, upon proof of the signature of the defendant or defendants to such admission by affidavit or otherwise, in case the same is not attested by the registrar or clerk, and without any further proof of the plaintiff's title (if no defendant other than the defendant signing such admission defends for the said lands or the said part thereof), give judgment for the plaintiff for the recovery of possession and for costs: provided that if the plaintiff receive notice of such admission before the return-day, he shall not be entitled as against the defendant or defendants signing to any costs incurred subsequently to the receipt of such notice, except the costs of attending the court on the return-day, unless the judge shall otherwise order: provided also, that where the admission is not signed by all the defendants defending for the said lands, or the said part thereof, the trial shall proceed against these non-admitting defendants, as if no admission had been signed. *See p. 278.*

Actions  
under  
19 & 20 Vict.  
c. 108, ss. 50,  
52, not to be  
brought  
under  
30 & 31 Vict.  
c. 142, s. 12.

25. Where an action can be brought to recover possession of a tenement under the provisions of the County Courts Act, 1856, no action shall be brought under the County Courts Act, 1867. *See p. 280.*

Adjourn-  
ment of  
trial.

26. The parties to any action, at any time before the action is called on, may, by consent and without payment of any trial fee, postpone the trial to such subsequent court as the



judge shall direct, but on such subsequent court such fee shall be paid or the cause be struck out. *See p. 173.*

27. Where any action is adjourned, no order of adjournment shall be served on either party, unless by direction of the judge. *See p. 173.*

No order of adjournment need be served.

28. When anything required by the practice of the court to be done by either party, before or during the trial, has not been done, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the trial to enable the party to comply with the practice. *See p. 173.*

Adjournment for non-compliance with rules.

29. Where a cause is adjourned by the court at the hearing day owing to its not being reached, the judge may allow a fee for the day's attendance to counsel and solicitor where engaged, and such costs shall be costs in the cause. *See p. 174.*

Costs on adjournment.

30. Where it appears to the judge or registrar that from the course of proceedings in any action the trial cannot be held on the return-day of the summons, he may postpone the trial until such other day as the state of the proceedings require, and give notice of such postponement to all parties and persons interested. *See p. 174.*

Postponement of trial.

31. Where any particulars or other document whatsoever is directed to be filed, it shall be filed with the registrar of the court, together with as many copies thereof as there are parties to be served, and the names, addresses, and descriptions of such parties, and an additional copy for the use of the judge if required. *See pp. 98, 107, 115, 140, 149, 220.*

Filing of documents.

32. Before any summons, notice, or other document, or any copy thereof, shall be issued by the registrar, the same shall be sealed with the seal of the court. *See p. 221.*

Sealing of documents.

33. Where by these rules any party is required to give notice according to a form mentioned in the schedule, it shall be sufficient if the notice given complies substantially with such form. *See p. 218.*

Form of notice.

34. In all cases where anything is required by the rules of practice to be done within a period of twenty-four hours, or within a period of forty-eight hours, no part of any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or of any day on which the offices of the court need not be open under these rules or under any order of the lord chancellor, shall be included in the computation of such period. *See p. 218.*

Computation of periods of 24 and 48 hours.

35. No process shall be served or executed on Sunday, Christmas-day, or Good Friday, nor shall any process be served on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or on any day on which the offices of the courts need not be open under these rules or under any order of the lord chancellor; but such days shall be counted in the computation of the time required by these rules in respect of service. *See pp. 120, 220.*

When process may not be served.

36. All letters or process sent by post by or to the officers of the courts, or by or to parties in any action, shall be prepaid, and shall not be sent by book-post. *See p. 218.*

Transmission of letters sent by post.



**Affidavits to be expressed in the first person.**

37. All affidavits shall be expressed in the first person of the deponent, and drawn up in paragraphs and numbered. *See p. 158.*

**Sources of knowledge to be stated.**

38. All affidavits other than those for which forms are given in the schedule shall state the deponent's age, occupation, quality, and place of residence, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to, or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are. *See p. 158.*

**Costs of affidavits when disallowed.**

39. The costs of affidavits not in conformity with the last two preceding rules shall be disallowed on taxation, unless the court shall otherwise direct. *See p. 158.*

**Filing of affidavits.**

40. Before any affidavit is used it shall be filed in the office of the registrar, but this rule shall not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of such order, provided that such order be not issued until such affidavit shall have been filed. *See p. 158.*

**Erasure, blotting, interlineation, &c., in affidavits.**

41. No affidavit in which there is any knife erasure, or which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, nor any affidavit in which there is any interlineation, unless the person before whom the same is sworn shall have duly initialled such interlineation, nor any affidavit or other document which is so imperfect upon the face or by reason of having blanks thereon that it cannot easily be read or understood, shall be filed or used in any action or proceeding, unless the judge shall otherwise order. *See p. 159.*

**Service when defendant is out of jurisdiction of county courts.**

42. Where a defendant shall be out of England, the judge or in his absence the registrar, may, upon an affidavit of the fact, direct the service of the plaint and summons to be effected within such time and in such manner as the judge or registrar may think fit. *See p. 122.*

#### *Detinue.*

**Judgment in detinue. Forms 188 and 189.**

43. The judgment in detinue, if for the plaintiff, shall be for the value of the goods detained, together with a sum to be stated in the judgment by way of damages for the detention and costs; but it may be made part of the order that on payment of damages for the detention, and costs, and return of the goods on or before a day to be named, satisfaction shall be entered. *See p. 187.*

#### *Confessions under the County Courts Act, 1850.*

**Confessions under 13 & 14 Vict. c. 61, s. 8.**

44. All confessions under section 8 of this Act shall be delivered to the registrar five clear days before the return-day: provided that, at any time before the cause is called on, the defendant may confess and admit the claim according to the form set forth in the schedule, subject, however, to an order by the judge to pay such costs as the plaintiff has incurred in consequence of the defendant's not having delivered such confession as hereinbefore required. *See p. 130.*

**Form 26.**

*Consents to Judgment under the County Courts Act, 1850.*

45. In all cases of consent under section 9 of this Act, the defendant may confess the amount of the plaintiff's costs besides the court fees, and the judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately. *See p. 131.*

Consents under 13 & 14 Vict. c. 61, s. 9. Forms 30 and 31.

*Cases under the County Courts Act, 1856.*

46. Where the parties, in pursuance of section 23 of this Act, agree to try any action in a county court, a plaint shall be entered, and a summons shall be issued thereon, as in other cases, and all the rules and practice of the court shall be adopted in such cases, so far as the same are applicable. *See pp. 71, 114.*

Trials by agreement under 19 & 20 Vict. c. 108, s. 23.

*Bills of Exchange Act, 1855.*

47. Where a defendant applies for leave to defend he shall satisfy the judge, or in his absence the registrar, by affidavit, that good grounds exist for granting leave to defend the action, and shall file with the registrar such affidavit, together with a copy thereof, and shall, if required so to do by the judge or registrar, give security according to the provisions of section 2 of the Bills of Exchange Act, 1855. *See p. 268.*

Leave to defend under 18 & 19 Vict. c. 67, s. 2. Form 10, Appendix F.

48. Where leave is given to defend, the registrar shall appoint the cause to be heard at the first convenient sitting of the court to be held after such leave is granted, and shall send to the plaintiff notice thereof according to the form set forth in the schedule, together with a copy of the affidavits made by the defendant, and shall also send to the defendant by post a notice according to the form in the schedule. *See p. 268.*

Notice of trial to be given.

Form 19.

49. Any application, under section 3 of the Bills of Exchange Act, 1855, to set aside the judgment, shall be made to the judge of the court; but until the judge can hear the same, execution shall be stayed, upon the defendant's giving security to abide the decision of the judge. *See p. 268.*

Applications under 18 & 19 Vict. c. 67, s. 3.

*Employers and Workmen Act, 1875.*

50. In any action between employers and workmen the court may exercise any of the powers mentioned in sub-section 1 of section 3 of the Employers and Workmen Act, 1875, although the parties may not have given any of the notices required by orders ix. and x. of these rules. *See p. 36.*

Power of court in actions between employers and workmen.

*Registry of Judgments.*

51. A return of every judgment entered in the City of London Court for the sum of 10*l.* and upwards, shall be transmitted by the registrar to the registrar of county courts judgments in London, in the same manner as returns of judgments entered in a county court are now transmitted. *See p. 188.*

Return of judgments in City of London Court.

52. A note of every judgment or order in an Admiralty action, or in any action which, before November 2, 1875, would have been the subject of a plaint or petition in equity, shall within ten days of the making thereof be transmitted by

Note of order in Admiralty and equity to be sent.

the registrar to the registrar of county courts judgments in London, who shall register the same as heretofore. *See p. 188.*

*Rules not to be added to.*

Rules to be  
adhered to.

53. No practice shall prevail in any court except as provided by these rules, nor shall any matter be added to or taken from any form in the schedule, whereby any obligation shall be imposed upon any suitor to which he is not liable under statute or these rules. *See pp. 107, 342.*

## ORDER XXXVIII.

### APPLICATION OF PRECEDING ORDERS.

Application  
of rules of  
procedure.

The rules of procedure contained in the preceding orders shall apply to proceedings under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, the Agricultural Holdings (England) Act, 1875, and the Friendly Societies Act, 1875, except where orders xxxiii., xxxiv., and xxxv. provide any other or inconsistent mode of procedure. *See pp. 27, 41, 42.*

## ORDER XXXIX.

THE COMPANIES ACTS, 1862 AND 1867, THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862, AND THE BUILDING SOCIETIES ACT, 1874.

25 & 26 Vict.  
cc. 86, 89;  
30 & 31 Vict.  
c. 131, s. 44;  
37 & 38 Vict.  
c. 42, s. 32.

The general orders, rules, and forms of the Chancery division of the High Court of Justice regulating for the time being the mode of proceeding under the Companies Acts, 1862 and 1867, shall be the orders, rules, and forms in all proceedings in the county courts for the winding up of a society registered under the Industrial and Provident Societies Act, 1862, the Building Societies Act, 1874, or for the winding up of a company under the Companies Acts, 1862 and 1867, so far as the same are applicable: provided that where it shall appear to the court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the court to name some bank to be used in lieu of the Bank of England. *See p. 27.*

## ORDER XL.

### *Proceedings in Acts not referred to in the foregoing Rules.*

Proceed-  
ings in Acts  
not referred  
to in fore-  
going rules.

Where by any Act not before mentioned in the foregoing rules proceedings are directed to be taken in a county court, such proceedings shall be commenced by plaint or petition; and the foregoing rules shall apply to such proceedings, so far as such rules are respectively applicable. *See pp. 23, 113.*

ALLOWANCES TO WITNESSES.

|                                          |   |    |    |    |   |    |    |
|------------------------------------------|---|----|----|----|---|----|----|
| Gentlemen, merchants, bankers,           | £ | s. | d. |    | £ | s. | d. |
| and professional men, <i>per diem</i>    |   |    |    |    |   |    |    |
| from                                     | 0 | 15 | 0  | to | 1 | 1  | 0  |
| Tradesmen, auctioneers, account-         |   |    |    |    |   |    |    |
| ants, clerks, and yeomen, <i>per</i>     |   |    |    |    |   |    |    |
| <i>diem</i> ... .. from                  | 0 | 7  | 6  | „  | 0 | 15 | 0  |
| Artisans and journeymen, <i>per</i>      |   |    |    |    |   |    |    |
| <i>diem</i> ... .. from                  | 0 | 4  | 0  | „  | 0 | 7  | 6  |
| Labourers, and the like, <i>per diem</i> |   |    |    |    |   |    |    |
| from                                     | 0 | 3  | 0  | „  | 0 | 4  | 0  |

Travelling expenses, sum reasonably paid, but not more than sixpence per mile, one way.

If the witnesses attend in more than one cause, they will be entitled to a proportionate part in each cause only.

NOTE.—It is considered to be unnecessary to give any rules with respect to taking acknowledgments of married women, as it is the duty of the solicitor employed to prepare the certificate and affidavit, and swear to the latter; and the course to be followed by the judge is laid down in the Act 3 & 4 Wm. c. 74. The only duty for the registrar to perform, besides that of swearing the solicitor to the affidavit, is that of putting his initials against all ALTERATIONS, INTERLINEATIONS, or ERASURES either in the CERTIFICATE or AFFIDAVIT.

## APPENDIX E.

### SCHEDULE OF FORMS.

1. General form of heading and conclusion of all notices and admissions.
2. General form of heading and conclusion of orders, judgments, and warrants.
3. General form of heading and conclusion of affidavits.
4. Memorandum to be made on any order or other document signed by one judge acting for another.
5. Memorandum to be placed at foot of every summons, notice, judgment, order, warrant, or any other process of the court.
6. Memorandum to be put on all plaint-notes.
7. Plaint-note (ordinary summons).
8. Plaint-note (default summons) under section 1 of the County Courts Act, 1875.
9. Plaint-note (default summons). Bills of Exchange Act.
10. Letter to be sent with summons out of district.
11. Ordinary summons.
12. Summons in chambers.
13. Notice of non-service of an ordinary summons.
14. Notice of doubtful service of an ordinary summons.
15. Affidavit of debt. County Courts Act, 1875, s. 1.
16. Default summons under section 1 of the County Courts Act, 1875.
17. Default summons under the Bills of Exchange Act, 1855.
18. Notice of service of default summons.
19. Notice of day of trial where defendant served with a default summons has given notice of defence.
20. Summons to witness to give evidence.
21. Summons to witness to produce documents.
22. Notice to be sent with all warrants of execution against the goods.
23. Judgment for defendant, or of nonsuit.
24. Judgment for plaintiff.
25. Notice to plaintiff of payment of instalment.

26. Admission of claim or part of claim under section 8 of the County Courts Act, 1850.
27. Affidavit of signature to admission, section 8 of the County Courts Act, 1850.
28. Notice to plaintiff of admission of claim under section 8 of 13 & 14 Vict. c. 61.
29. Notice to plaintiff of admission of part of claim, under section 8 of 13 & 14 Vict. c. 61.
30. Admission under section 9 of 13 & 14 Vict. c. 61.
31. Affidavit of signature under section 9 of 13 & 14 Vict. c. 61.
32. Warrant of execution against the goods of defendant.
33. Warrant of execution against the goods of plaintiff.
34. Affidavit in support of application for substituted service.
35. Order for leave to proceed as if service had been effected.
36. Notice by plaintiff of consent to accept instalments.
37. List of gentlemen who have consented to act as assessors in this court under section 5 of the County Courts Act, 1875.

FORMS UNDER THE DEBTORS ACT, 1869, IN WHICH  
SPECIAL MATTER SHOULD BE PRINTED.

38. Certified copy of order or judgment.
39. Judgment summons on an order or judgment of a county court.
40. Order upon a judgment summons altering original order or judgment.
41. Order of commitment.

FORMS IN WHICH SPECIAL MATTER NEED NOT BE  
PRINTED.

42. Undertaking by next friend of infant to be responsible for defendant's costs.
43. Notice to high bailiff of foreign court of order against him for neglect.
44. Undertaking by solicitor to be responsible for costs.
45. Agreement to give jurisdiction to a county court.
46. Certificate of deposit. Examples of particulars of demand.
47. Notice of sureties.
48. Affidavit of justification.
49. Bond under the Summary Procedure on Bills of Exchange Act, 1855.
50. Particulars of plaintiff's demand on cause of action in actions of contract ordered to be tried in a county court.
51. Notice of trial of action of contract ordered to be tried in a county court.

52. Statement of plaintiff's cause of action in actions of tort remitted for trial in a county court.
53. Notice of trial of action of tort remitted for trial in a county court.
54. Affidavit for discovery.
55. Order for discovery.
56. Affidavit in obedience to order for discovery.
57. Interrogatories affidavit.
58. Order for an oral examination.
59. Notice of set-off.
60. Notice of special defence.
61. Notice to be given by defendant under 6 & 7 Vict. c. 96, s. 1, in an action for libel or slander remitted for trial in a county court.
62. Notice to be given by defendant under 6 & 7 Vict. c. 96, s. 2, in an action for libel remitted for trial in a county court.
63. Notice by plaintiff that judgment may be signed against individual members of a firm.
64. Notice to plaintiff that defendant defends on behalf of others.
65. Notice to third party of defendant's claim to contribution, indemnity, &c.
66. Notice to plaintiff of defendant's claim against a third party.
67. Notice to defendant of non-sufficiency of affidavit under order xi., rule 5.
68. Notice to plaintiff to deposit sum in court under order xi., rule 5.
69. Notice to defendant of deposit under order xi., rule 5, having been made, or not having been made.
70. Order fining a witness for non-attendance.
71. Warrant of execution against the goods of a witness for a fine.
72. Affidavit to obtain a warrant to bring up a prisoner.
73. Warrant to bring up a prisoner to give evidence.
74. Order for changing venue.
75. Notice by court to which an action has been sent, of the day of trial.
76. Notice of objection to jurisdiction.
77. Bond where notice of objection to jurisdiction given.
78. Consent that court shall decide in an action where title has incidentally come in question.
79. Notice to be sent to both parties of trial where cause sent down by High Court of Justice.
80. Application for assessors.
81. Summons to assessors.
82. Notice to opposite party of names of assessors suggested by party applying that the action should be tried with their assistance.
83. Notice of sitting to hear objections raised by one party to the assessors named by the other.
84. Order upon hearing objection to proposed assessors.
85. Summons where a defendant sued by an assignee has had notice that the assignment is disputed by the assignor.



86. Summons whereas defendant sued by an assignee has had notice that the assignment is disputed by the assignor, and has paid debt and costs into court.
87. Order where assignment is invalid.
88. Order where assignment is valid.
89. Order where assignment is invalid, and defendant files a counter claim against plaintiff.
90. Registrar's notice of jury.
91. Summons to jurors.
92. Order fining a juror for non-attendance.
93. Warrant of execution against the goods of a juror for a fine.
94. Order to adjourn proceedings.
95. Order appointing guardian named by infant defendant.
96. Order appointing guardian of infant defendant where defendant does not name a guardian.
97. Agreement not to appeal.
98. Notice of desire to examine defendant as to certain debts due to him.
99. Order when garnishee present.
100. Summons upon a garnishee.
101. Judgment against garnishee.
102. Execution against garnishee.
103. Certificate of the result of the hearing of a cause sent after issue joined for trial to a county court.
104. Order to suspend order of judgment.
105. Order for costs of the day where rule for a *certiorari* or prohibition has not been served.
106. Order for costs of the day where a writ of *certiorari* or prohibition has not been lodged.
107. Order for a new trial.
108. Order to rescind a former order.
109. Interpleader summons to execution-creditor.
110. Interpleader summons to a claimant setting up a claim to the goods or the proceeds thereof.
111. Interpleader summons to a claimant setting up a claim to rent in respect of the premises upon which the execution was levied.
112. Interpleader summons to an execution-creditor, and to the high bailiff where claimant claims damages as well as the goods seized.
113. Interpleader summons to a claimant setting up a claim to damages as well to the goods or the proceeds thereof.
114. Order on an interpleader summons where the claim is not established.
115. Order on an interpleader summons where the claim is established.
116. Order on an interpleader summons where both goods and damages are claimed, and the claim to neither is established.
117. Order on an interpleader summons where both goods and damages are claimed, and the claim to both is established.
118. Order on an interpleader summons where both goods

- and damages are claimed, and the claim to the goods is, but that to damages is not, established.
119. Order on an interpleader summons where both goods and damages are claimed, and the claim to the goods is not, but the claim to damages is, established.
  120. Claim of an execution-creditor for damages from a high bailiff.
  121. Order on an interpleader summons by execution-creditor against a high bailiff where the claim to damages is established.
  122. Order on an interpleader summons by an execution-creditor against a high bailiff where the claim to damages is not-established.
  123. Order on an interpleader summons where both goods and damages are claimed, and money is paid into court in respect of the latter, and the claim to the goods is established and the money paid into court is found to be sufficient to satisfy the damages.
  124. Order on an interpleader summons where both goods and damages are claimed, and money is paid into court in respect of the latter, and the claim to the goods is established, and the money paid into court is adjudged insufficient.
  125. Order on an interpleader summons by an execution-creditor against a high bailiff for damages, and when the high bailiff pays money into court.
  126. Warrant of execution against the goods of claimant.
  127. Bond where a plaintiff is appellant.
  128. Bond where defendant is appellant.
  129. Case on appeal.
  - 130 to 135, same as 26 to 31.
  136. Notice to defendant where any change of plaintiff.
  137. Summons in nature of *scire facias* where any change of defendant.
  138. Judgment on *scire facias* on change of defendant.
  139. Judgment against an executor who has wasted assets.
  140. Judgment against executor or administrator who admits his representative character and denies the demand.
  141. Judgment against executor or administrator where the defendant admits his representative character, but denies the demand, and alleges total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves administration.
  142. Judgment against executor or administrator, where the defendant admits his representative character but denies the demand, and alleges total or partial administration of assets, and the plaintiff proves his demand, and the defendant does not prove the administration.
  143. Judgment against an executor or administrator who admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration.
  144. Judgment against an executor or administrator who

- admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, and does not prove the administration.
145. Summons to an executor of plaintiff's intention to apply to the court where assets have come to defendant's hands since judgment.
  146. Warrant of execution against the goods of a testator.
  147. Judgment against an executor on a devastavit since judgment.
  148. Order of reference.
  149. Summons to a tenant or other person holding over.
  150. Summons for recovery of a tenement.
  151. Order for recovery of tenement.
  152. Warrant for giving possession of tenement.
  153. Summons in action of ejectment.
  154. Notice of withdrawal of action as to the whole or part of property.
  155. Notice in ejectment that a person not originally made a defendant will appear and defend.
  156. Notice in ejectment that a defendant will limit his defence to part of the property.
  157. Judgment in ejectment for all the plaintiffs for the whole property.
  158. Judgment in ejectment for all the plaintiffs for part of the property against one of the defendants, and for the other defendants as to the residue of the property.
  159. Judgment in ejectment for one of the plaintiffs for all the property against all the defendants.
  160. Judgment in ejectment for plaintiff whose title has expired before trial.
  161. Judgment in ejectment for defendant.
  162. Judgment in ejectment for defendant's costs where plaintiff does not appear.
  163. Heading and conclusion for special case in ejectment.
  164. Warrant of execution in ejectment for possession and costs.
  165. Special warrant of execution in ejectment for possession and costs where one of several plaintiffs has died after judgment and before execution executed.
  166. Judgment in ejectment for plaintiff where defendant is joint tenant, tenant in common, or coparcener with plaintiff, and an actual ouster is proved.
  167. Judgment in ejectment for defendant where defendant is joint tenant, tenant in common, or coparcener with the plaintiff, and no actual ouster is proved.
  168. Order in ejectment for the substitution of the heir or other representative of a sole plaintiff who dies before the return-day for such deceased plaintiff, and for the continuation of the action in the name of the heir or other representative.
  169. Order in ejectment for substitution of the heir or other representative of one of several plaintiffs, who dies before the return-day for such deceased plaintiff, and for the continuation of the action in the names of the

- surviving plaintiff and of the heir or other representative of the deceased plaintiff.
170. Judgment in ejectment for substituted plaintiff.
  171. Judgment in ejectment for surviving and substituted plaintiffs.
  172. Order in ejectment, giving leave to a party claiming the property on the death of defendant, who dies before the return-day, to appear and defend in the place of such deceased defendant.
  173. Summons in ejectment in the nature of a *scire facias* for costs against the representatives of a deceased defendant.
  174. Judgment in ejectment for plaintiff who has withdrawn the action as to part of the property.
  175. Confession in ejectment by defendant of plaintiff's title to the property.
  176. Confession in ejectment by defendant defending separately for part of the property of plaintiff's title to such part.
  177. Judgment in ejectment for plaintiff where a defendant, defending separately for part of the property, admits plaintiff's title to such part, and the action proceeds for the recovery of the remainder of the property.
  178. Notice in ejectment by mortgagee against mortgagor that defendant has paid into court a sum of money for principal, interest, and costs.
  179. Object in ejectment by mortgagee against mortgagor (all money due for principal, interest, and costs having been paid into court) upon plaintiff to reconvey to the defendant the mortgaged property.
  180. Order in ejectment by mortgagee against mortgagor (a certain sum having been paid into court for principal, interest, and costs), that defendant shall pay a further sum into court, and that upon such payment being made the plaintiff shall reconvey the mortgaged property to the defendant.
  181. Particulars or statement of the cause of action under section 12 of 30 & 31 Vict. c. 141.
  182. Notice to distrainer of goods [or cattle] intended to be replevied.
  183. Bond in replevin where action to be commenced in high court.
  184. Bond in replevin where action to be commenced in county court.
  185. Warrant to high bailiff to replevy.
  186. Judgment for defendant in replevin for rent.
  187. Judgment for defendant in replevin of cattle damage-feasant.
  188. Judgment in detinue.
  189. Warrant of execution in detinue against goods of defendant.
  190. Order under the Friendly Societies and other Acts.
  191. Order for warrant of execution to issue under the Friendly Societies and other Acts.

192. Warrant of execution against the goods under the Friendly Societies and other Acts.
193. Warrant of commitment for contempt.
194. Order under the Mercantile Law Amendment Act, 1856.
195. Distringas and warrant of execution against defendant's goods for the amount of damages for non-delivery of the goods (supposing the goods delivered under the order and distringas), and costs, under the Mercantile Law Amendment Act, 1856.
196. Warrant of execution against defendant's goods under the Mercantile Law Amendment Act, where plaintiff exercises the option of having the damages assessed for the non-delivery of the goods (where the goods are not delivered pursuant to the order) levied by distress and sale of defendant's goods.
197. Defendant's admission.
198. Affidavit of signature to defendant's admission.
199. Defendant's statements—equity.
200. Order.—Administration action.
201. Form of order under order xviii., rule 15, or under order xi.
202. Form of order under order xviii., rule 14, or under order xi.
203. Order for reference in foreclosure action by legal mortgage.
204. Order of sale in an action by a legal or equitable mortgagee or person entitled to a lien.
205. Order.—Dissolution of partnership.
206. Judgment for foreclosure.
207. Partnership.
208. Notice of order to absent party.
209. Notice to creditor to prove his claim.
210. Notice to creditor of allowance of claim.
211. Registrar's certificate.
212. Notice that registrar's certificate may be inspected.
213. Bond to be given by receiver.
214. Warrant of assistance.
215. Warrant of possession.
216. Notice of change of solicitor.
217. Order of payment of legacy into High Court of Justice.
218. Order of transfer of suit or matter to High Court of Justice.
219. Order in the nature of an injunction.
220. Notice of application for committal.
221. Order of committal for breach of an order in the nature of an injunction.
222. Order of committal for neglect to obey order.
223. Warrant of committal.
224. Notice of application for discharge from custody.
225. Order of discharge from custody.
226. Affidavit under 30 & 31 Vict. c. 142, s. 24.
227. Petition by person interested in funds in court.
228. Certificate in case of money.

- 229. Certificate in case of transfer of stock.
- 230. Acknowledgment of filing of receipt or transfer ticket.
- 231. Certificate of deposit of security.
- 232. Notice of payment into post-office savings bank or of transfer of stock or deposit of security.
- 233. Notice to treasurer.
- 234. Letter to Commissioners of Treasury as to drawing out money.
- 235. Judgment summons on order or judgment of a court other than a county court.
- 236. Affidavit where judgment summons is sought on an order of a court not a county court.
- 237. Order of commitment on an order or judgment of a court other than a county court.
- 238. Affidavit.
- 239. Certificate by registrar of bankruptcy of judgment-debtor.
- 240. Notice to a respondent under the Agricultural Holdings (England) Act, 1875.
- 241.
- 242. Undertaking in writing by defendant to perform contract.

#### ADMIRALTY FORMS.

- 243. Præcipe or entry of plaint.
- 244. Præcipe for permission for suit to be heard at a special place.
- 245. Summons.
- 246. Summons.
- 247. Warrant of arrest and detention.
- 248. Bail bond.
- 249. Order of release.
- 250. Præcipe to enter an appearance.
- 251. Notice of hearing.
- 252. Order of transfer to High Court of Justice.
- 253. Order of transfer to county court or to High Court of Justice.
- 254. Judgment or order.
- 255. Præcipe for a warrant of execution.
- 256. Warrant of execution against the vessel or property of defendant.
- 257. Order for transfer of sale to High Court of Justice.
- 258. Præcipe for paying in money.
- 259. Summons to assessors.
- 260. Order fining an assessor for non-attendance.
- 261. Admiralty actions-book.

FORMS.

NOTE.—In all forms to be printed for the future the number of  
 plaint and number of warrant should be put, and the seal im-  
 pressed on the right-hand corner of the form, instead of the left-  
 hand corner, so as to facilitate reference where papers are joined  
 together.

Summonses, affidavits, notices, judgments, orders, warrants, and other proceedings taken under the Acts to which orders ~~xxxi.~~, ~~xxviii.~~, ~~xxvii.~~, ~~xxvi.~~, ~~xxv.~~, and order ~~xxvii.~~, rules 47 and 50, relate, should be entitled with the Acts respectively referred to in those orders and rules.

1. (See p. 218.)

GENERAL FORM OF HEADING AND CONCLUSION OF ALL NOTICES  
AND ADMISSIONS.

No. of Plaintiff.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
[Where sent or issued by Court.      *Seal.*]  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

Dated this \_\_\_\_\_ day of \_\_\_\_\_  
Registrar [or person sending notice  
on making admission].

2. (See pp. 219, 302, 306.)

GENERAL FORM OF HEADING AND CONCLUSION OF ORDERS,  
JUDGMENTS, AND WARRANTS.

No. of Plaintiff.

In the County Court of                      holden at                      (Seal.)

Between A.B., Plaintiff,  
and  
C.D., Defendant.

The                  day of                  187 .

\* \* \* \*

By the Court,

Registrar of the Court.



## 3. (See p. 158.)

GENERAL FORM OF HEADING AND CONCLUSION OF AFFIDAVITS.  
(Except where otherwise hereafter given.)

No. of Plaintiff.

In the County Court of \_\_\_\_\_ holden at  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

\*       \*       \*       \*       \*

Sworn at \_\_\_\_\_ in the }  
county of \_\_\_\_\_ , }  
this \_\_\_\_\_ day of \_\_\_\_\_ }  
One thousand eight hundred }  
and \_\_\_\_\_ , before me }

## 4. (See p. 328.)

MEM. TO BE MADE ON ANY ORDER OR OTHER DOCUMENT  
SIGNED BY ONE JUDGE ACTING FOR ANOTHER.

This [as the case may be] was made [or granted] and signed  
by Judge Z. acting in the matter for Judge A., under the pro-  
visions of section 20 of the County Courts Act, 1867.

## 5. (See p. 119.)

MEM. TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE,  
JUDGMENT, ORDER, WARRANT, OR ANY OTHER PROCESS OF THE  
COURT.

Hours of attendance at the office of the registrar [place of  
office] from ten till four o'clock, except on [here insert the day  
on which the office will be closed], when the office will be closed  
at one o'clock.

## 6. (See p. 114.)

## MEMORANDUM TO BE PUT ON ALL PLAINT-NOTES.

Bring this note when you come to the court or to the office for  
any purpose connected with this action. On the day of hearing  
bring all books, &c., necessary to prove your case.

Money will be paid out of court ONLY on production of this note,  
and upon your or your agent's PERSONAL ATTENDANCE if you re-  
side within the district.

If the defendant will sign a statement at the office of the re-  
gistrar confessing that he owes you the money, or if you and he  
will sign an agreement at the registrar's office as to the amount  
due, and will consent to a judgment, you will only have to pay  
half the hearing fee.

If the debt or claim exceed 5l. you may have the action tried  
by a jury, on giving notice in writing at the registrar's office three  
clear days before the hearing, and on payment of 5s. for fees of  
jury.

Summonses for witnesses and for the production of documents  
may be obtained at the office, upon payment of the proper fee.

## 7. (See pp. 114, 189.)

## PLAINT-NOTE (ORDINARY SUMMONS.)

In the County Court of                      holden at

(Seal.)

No. of Plaintiff.

A.B., Plaintiff,  
 against  
 C.D., Defendant.

Fees paid.

| £ | s. | d. |
|---|----|----|
|   |    |    |
|   |    |    |
|   |    |    |

The above action was entered this day, and will be tried  
 at                      on                      the                      day of  
 at                      o'clock in the                      noon.

Dated this                      day of                      187 .

Registrar of the Court.

*The hearing fees must be paid before the cause is called on.*

N.B.—IF YOU OBTAIN A JUDGMENT AGAINST THE DEFENDANT,  
 ALL MONEYS ORDERED TO BE PAID THEREUNDER MUST BE PAID  
 INTO COURT, AND MUST NOT BE RECEIVED BY YOU. (See sect. 45  
 of the County Courts Act, 1856.)

## 8. (See p. 126.)

PLAINT-NOTE (DEFAULT SUMMONS) UNDER SECTION 1 OF THE  
COUNTY COURTS ACT, 1875.

In the County Court of                      holden at

No. of Plaintiff.

Between A.B., Plaintiff,  
 and  
 C.D., Defendant.

(Seal.)

| £ | s. | d. |
|---|----|----|
|   |    |    |
|   |    |    |
|   |    |    |

The above action was entered this day, under section 1 of  
 the County Courts Act, 1875, and you will be entitled to  
 judgment at the expiration of sixteen days from the date of  
 the personal service of the summons, inclusive of the day of



the service. The defendant [*or witness*] is stated to reside at  
[*here insert the full address given in the summons*].

Your obedient servant,

Registrar of the Court.

To the High Bailiff of the County Court,  
of holden at

# 11. (See p. 119.)

## ORDINARY SUMMONS.

(*To be used in cases for which other forms are not specially provided.*)

In the County Court of holden at  
No. of Plaintiff.  
(*Seal.*)

Between A.B., Plaintiff,  
[*Address, Description,*]  
and  
C.D., Defendant.  
[*Address, Description.*]

(a.) [*Issued "by leave of the court" or "by leave of the registrar."*] (a) Insert this when necessary.

You are hereby summoned to appear at a county court to be  
holden at on the day of 18 ,  
at the hour of in the noon, to answer the plaintiff,  
to a claim, the particulars of which are hereunto annexed.

Where the amount of the claim does not exceed forty shillings,  
after "claim" strike out the words "the particulars of which  
are hereunto annexed," and state shortly the substance of the  
claim.]

Dated this day of 18 .  
Registrar of the Court.

|                   | £   | s.  | d.  |
|-------------------|-----|-----|-----|
| Debt or claim ... | ... | ... | ... |
| Costs of plaint   | ... | ... | ... |
| Solicitor's costs | ... | ... | ... |
| Total amount      | £   |     |     |

To the Defendant.

[N.B.—If YOU OWE THE MONEY, AND WILL CONSENT TO A  
JUDGMENT, YOU WILL SAVE HALF THE HEARING FEE.]

SEE BACK.

[*To be endorsed on the summons.*]

If you confess the plaintiff's claim—by doing which you will  
save half the hearing fee—you should sign a confession, printed  
forms for which may be obtained at the office, before the

registrar of the court five clear days before the return-day, that is, the day of hearing. The confession, if not signed before the registrar, must be signed before a solicitor; but you may deliver your confession to the registrar at any time before the action is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you and the plaintiff can agree as to the amount due and the mode of payment, and will before the action is called on for trial sign a memorandum of such agreement at the registrar's office or before a solicitor, you will save half the hearing fee.

If you pay the debt and costs, as stated in the summons, five clear days before the hearing, you will avoid further costs; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit a part only of the claim, you may by paying into the registrar's office the amount so admitted, five clear days before the day of hearing, together with costs proportionate to the amount you pay in, avoid further costs, unless the plaintiff proves a demand exceeding your payment.

If you intend to dispute the plaintiff's claim on any of the following grounds,—

1. That the plaintiff owes you a debt which you claim should be set off against it;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under a bankrupt or insolvent Act;
6. Tender;
7. Statutory or equitable defence;

you must give notice thereof to the registrar five clear days before the return-day; and such notice must contain the particulars required by the rules of the court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your DEFENCE be a SET-OFF, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your DEFENCE be a TENDER, you must pay into court, before or at the trial, the amount tendered.

If the debt or claim exceed 5*l.* you may have the action tried by a jury, on giving notice in writing at the registrar's office three clear days before the hearing, and on payment of 5*s.* for the use of such jury.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of the court, upon payment of the proper fee.

*NOTE.—An ordinary summons is to be printed in pica type, leaded, on a half-sheet of cream wove foolscap, fourteen pounds or thereabouts.*

12. (*See pp. 169, 303.*)

## SUMMONS IN CHAMBERS.

[*Heading as in No. 11.*]

Let all parties concerned attend at my chambers [*state where*] on the            day of            187 , at  
o'clock in the            noon on the hearing of an application on  
the part of [*state on whose behalf the application is made and the precise object of the application*].

Judge or Registrar.

Dated this            day of            187 .

This summons was taken out by A.B., of            solicitor  
for the applicant.

To [*state the name and address of the person to whom this summons is directed, or of his solicitor*].

13. (*See p. 123.*)

## NOTICE OF NON-SERVICE OF AN ORDINARY SUMMONS.

Take notice, that the summons in this action has not been served, for the following reason :—

Dated this            day of            187 .  
To the

[Plaintiff.]

E.F., High Bailiff.

14. (*See p. 122.*)

## NOTICE OF DOUBTFUL SERVICE OF AN ORDINARY SUMMONS.

Take notice, that the summons in this action was left at the address given by you, and [*here insert the bailiff's return of service, as endorsed on the summons*]. You must therefore be prepared at the hearing to satisfy the court that the summons has come to the defendant's knowledge.

To the Plaintiff.

15. (*See p. 126.*)

## AFFIDAVIT OF DEBT. COUNTY COURTS ACT, 1875, s. 1.

38 & 39 Vict.  
c. 50, s. 1.

In the County Court of            holden at

I, A.B. of, &c., make oath and say, that C.D., of [*address, occupation, and description*] is indebted to me in the sum of  
for /            [*add where the action*  
*is brought for a demand not exceeding five pounds*], and I further  
say that the            were sold and delivered  
[*or let on hire*] to the said C.D. to be used or dealt with in the  
way of his trade [*or profession or calling of a*            ].

A.B.

Sworn at, &amp;c.

NOTE.—[When affidavit is made by a clerk alter the form accordingly, and add the following : That I am a person in the employ of A.B., and that I am duly authorised by him to make this affidavit, and that it is within my own knowledge that the aforesaid debt was incurred, and for the consideration above stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.]

16. (See pp. 126, 128.)

38 & 39 Vict. c. 50, s. 1. (a) DEFAULT SUMMONS UNDER SECTION 1 OF THE COUNTY COURTS ACT, 1875.

[Heading as in ordinary summons, No. 11.]

Take notice, that unless within sixteen days after the personal service of this summons on you, inclusive of the day of such service, you return to the registrar of this court at [place of office] the notice given below, dated, and signed by yourself or your solicitor, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any further proof in support of such claim than the affidavit filed in court herein, proceed to judgment and execution. If you return such notice to the registrar within the time specified, the registrar will send you by post notice of the day upon which the action will be tried.

|                                             | £   | s.  | d.  |
|---------------------------------------------|-----|-----|-----|
| Claim . . . . .                             | ... | ... | ... |
| Fee for plaintiff . . . . .                 | ... | ... | ... |
| Solicitor's costs (where payable) . . . . . | ... | ... | ... |
| Total amount of debt and costs . . . . .    | ... | ... | ... |

Dated this                      day of                      18                      .

\_\_\_\_\_  
Registrar of the Court.

To the Defendant.                      See below.

[N.B.—This summons must be served within a period of six months from the date hereof, or within such extended period as may be allowed.]

NOTICE OF INTENTION TO DEFEND, OR TO OBJECT TO THE JURISDICTION OF THE COURT. (See p. 128.)

[To be at foot of summons.]

Order viii., rule 27.

In the County Court of (b)                      No. of Plaintiff holden at

(c) Here must be signed the name of defendant or of his solicitor, and in the latter case the words "solicitor for," together with his address, must be prefixed.

A.B. v. C.D.  
I intend to defend this action [or to object to the jurisdiction of the court].

Dated this                      day of                      187                      .  
\_\_\_\_\_  
(c) Defendant.

(a) This summons is to be printed in pica type, leaded, on a half-sheet of salmon-tinted foolscap paper, 14 lbs. or thereabouts.

(b) To be filled in by registrar previous to issue of summons.



## SEE BACK.

[To be endorsed on the Summons.]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, within sixteen days after the service of this summons, and without returning the notice of intention to defend or to object to the jurisdiction of the court, you will avoid further costs.

If you do not return the notice of intention to defend or to object to the jurisdiction of the court, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith [or by instalments, *to be specified as in plaintiff's written consent*].

If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons; and you may, by paying into the registrar's office at the same time the amount so admitted, together with costs proportionate to the amount you pay in, avoid further costs, unless the plaintiff at the trial shall prove a claim against you exceeding the sum so paid.

If you intend to dispute the plaintiff's claim on any of the following grounds,—

1. That the plaintiff owes you a debt which you claim should be set off against it;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under a bankrupt or insolvent Act;
6. Tender;
7. Statutory or equitable defence;

you must give, with the notice of intention to defend, notice of such special defence; and such last-mentioned notice must contain the particulars required by the rules of the court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court, before or at the trial, the amount tendered.

If you give such notice of intention to defend within the time specified, you may, *if the debt exceeds five pounds*, have the case tried by a jury, on giving notice in writing at the registrar's office three clear days before the trial, and on payment of five shillings for the use of such jury.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court upon payment of the proper fee.

NOTE.—*This summons is to be printed on a half-sheet of salmon-tinted foolscap paper, with the "Notice of intention to defend or object" separated by a perforated line, so that it may be torn off for transmission to the registrar.*

17. (*See p. 265.*)

## (a) DEFAULT SUMMONS UNDER THE BILLS OF EXCHANGE ACT, 1855.

*[Heading as in ordinary summons, No. 11.]*

18 & 19 Vict. c. 67. Take notice, that unless within twelve days after the service of this summons on you, inclusive of the day of such service, you obtain leave from the judge or registrar of this court to defend this action, the plaintiff may proceed to judgment and execution.

Dated this                      day of                      187 .  
                                                                                  Registrar of the Court.

To the Defendant.

*[N.B.—This summons must be personally served on the defendant within six calendar months from the date thereof, and not afterwards.]*

*Indorsement to be made on the summons before service thereof.*

The plaintiff claims £                      for principal and interest [*or*                      balance of principal and interest], due to him as the payee [*or* indorsee] of a bill of exchange [*or* promissory note], a copy of which is hereunto annexed, and also for noting and bank expenses, and the sum of                      for court fees [and for solicitor's costs herein]: And if the amount thereof be paid to the registrar of the court four days from the service hereof, no further proceedings will be taken.

Leave to defend may be obtained upon application at the office of the registrar of this court, supported by affidavit showing that there is a defence to the action on the merits, or disclosing facts showing that it is reasonable that the defendant should be allowed to defend the action.

*Indorsement on copy default summons after service.*

This summons was served by                      personally on  
                                          [*the defendant or the defendants*] on                      the  
                                          day of                      187 .

(a) This summons is to be printed in pica type, leaded, on a half-sheet of salmon-tinted foolscap paper, 14 lbs. or thereabouts.

18. (*See p. 128.*)

## NOTICE OF SERVICE OF DEFAULT SUMMONS.

38 & 39 Vict. c. 50; and 18 & 19 Vict. c. 67. You are hereby informed that the defendant has [*or* has not] been served with the summons issued in this action [*when he has not been served add why it has not been served*].

High Bailiff.

To the Plaintiff.

19. (*See p. 129.*)

## NOTICE OF DAY OF TRIAL WHERE DEFENDANT SERVED WITH A DEFAULT SUMMONS HAS GIVEN NOTICE OF DEFENCE.

38 & 39 Vict. c. 50, s. 1. Take notice, that this action will be tried at a court to be holden on the                      day of                      at o'clock in the                      noon.

## 20. (See p. 156.)

## SUMMONS TO WITNESS TO GIVE EVIDENCE.

You are hereby required to attend at [*the court-house* 9 & 10 Vict.  
*in* ] on the day of c. 95, s. 86;  
 187 , at the hour of of 38 & 39 Vict.  
 in the noon, to give evidence in the above cause on c. 50.  
 behalf of the [*plaintiff or defendant, as the case may be*].  
 Dated this day of 187 .  
 Registrar of the Court.

To

## 21. (See p. 156.)

## SUMMONS TO WITNESS TO PRODUCE DOCUMENTS.

You are hereby required to attend at [*the court-house* 9 & 10 Vict.  
*in* ] on the day of c. 95, s. 86.  
 187 , at the hour of of  
 in the noon, on the hearing of the above cause, and  
 then and there to have and produce the several documents  
 hereunder specified, and all other books, papers, writings, and  
 other documents relating to the above cause, which may be in  
 your custody, possession, or power. In default of your attend-  
 ance you will be liable to a penalty of 10*l.*, under section 86 of  
 the County Courts Act, 1846 (9 & 10 Vict. c. 95).  
 Dated this day of 187 .  
 Registrar of the Court.

To

[*Here insert list of documents required to be produced.*]

## 22. (See p. 226.)

NOTICE TO BE SENT WITH ALL WARRANTS OF EXECUTION  
AGAINST THE GOODS.

Take notice, that the warrant of execution against your  
 goods on the judgment obtained against you in this action is  
 for the following amount:—

|                                           | £ | s. | d. |
|-------------------------------------------|---|----|----|
| Amount for which judgment was obtained... |   |    |    |
| Since paid by you into court ... ..       |   |    |    |
| Remaining due on judgment ... ..          |   |    |    |
| Poundage for issuing this warrant ... ..  |   |    |    |
| Total amount to be levied ... ..          |   |    |    |

The costs of keeping possession of such of your goods as may  
 be seized is SIXPENCE IN THE POUND PER DAY ON THE VALUE  
 OF SUCH GOODS.

If you pay the amount to be levied within half an hour of  
 the entry of the bailiff, you will not be required to pay to him  
 any further sum than the amount directed to be levied as stated  
 above.

If your goods are removed you will have to pay the appraisement fee as under mentioned.

Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

If your goods are sold, the following fees are chargeable for the appraisement and sale, and no others :—

For the appraisement SIXPENCE IN THE POUND ON THE VALUE of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

### 23. (See pp. 178, 181, 183.)

#### JUDGMENT FOR DEFENDANT, OR OF NONSUIT.

9 & 10 Vict.  
c. 95, s. 79.

Upon hearing this cause at a court holden this day, it is adjudged that judgment be entered for the defendant [or that judgment of nonsuit be entered], and that the plaintiff do pay the sum of £            for the defendant's costs : and it is ordered that the plaintiff do pay the same to the registrar of this court on the            day of            .

### 24. (See pp. 179, 181, 186.)

#### JUDGMENT FOR PLAINTIFF.

|                                                               |       |       |                                                                   |                                           |
|---------------------------------------------------------------|-------|-------|-------------------------------------------------------------------|-------------------------------------------|
| Acknowledgment of<br>payment into court.                      |       |       | Received by                                                       | It is this day adjudged that the          |
| Date.                                                         | £     | s. d. |                                                                   |                                           |
| _____                                                         | _____ | _____ | _____                                                             | dant the sum of £            for debt     |
| _____                                                         | _____ | _____ | _____                                                             | [or damages], and £            for costs, |
| _____                                                         | _____ | _____ | _____                                                             | amounting together to the sum of          |
| _____                                                         | _____ | _____ | _____                                                             | £            .                            |
| _____                                                         | _____ | _____ | _____                                                             | And it is ordered that the defendant      |
| _____                                                         | _____ | _____ | _____                                                             | do pay the same to the registrar of       |
| the court, on the            day of            [or by instal- |       |       | ments of            for every            days ; the first instal- |                                           |
| ment to be paid on the            day of            18    ].  |       |       |                                                                   |                                           |

[In case default be made in payment of any one of such instalments, and execution issue, it shall be for the whole of the above amount then remaining due.]

*This form will, by striking out the words within brackets, or the words "on the            day of            " in line 9, apply to judgments of payment, whether for payment forthwith of the whole claim or by instalments, and to judgments under section 9 of the County Courts Act, 1850, 13 & 14 Vict. c. 61, and also to judgments in replevin, where the judgment is for the plaintiff.*

### 25. (See p. 188.)

#### NOTICE TO PLAINTIFF OF PAYMENT OF INSTALMENT.

I hereby give you notice, that A.B., the Defendant, has paid

into court the sum of £                      under the judgment obtained by you against him.

[N.B.—Upon your applying for the above amount it will be necessary that you should produce or send the plaint-note given to you on the entry of the plaint.]

26. (Same as Form 130.—See p. 130.)

ADMISSION OF CLAIM OR PART OF CLAIM UNDER SECTION 8 OF THE COUNTY COURTS ACT, 1850.

I, the defendant, do hereby confess and admit that the sum of £                      , the amount claimed [or the sum of £                      , being part of the amount claimed by the plaintiff in this 13 & 14 Vict. action] is due to him from me [and that I will pay the same by c. 61, s. 8. instalments of                      ].

Dated this                      day of                      187                      .

Signed in the presence of                      .

*This paper, marked A, is the statement referred to in the annexed affidavit.*

27. (Same as Form 131.—See p. 130.)

AFFIDAVIT OF SIGNATURE TO ADMISSION, SECTION 8 OF THE COUNTY COURTS ACT, 1850.

I,                      of                      gentleman, solicitor of Her Majesty's Supreme Court of Judicature, make oath and say, that I was present on the                      day of                      one thousand eight hundred and seventy                      , and did see the 13 & 14 Vict. above-named defendant sign the statement hereunto annexed, c. 61, s. 8. marked with the letter A, and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

28. (Same as Form 132.—See p. 130.)

NOTICE TO PLAINTIFF OF ADMISSION OF CLAIM UNDER SECTION 8 OF 13 & 14 VICT. C. 61.

I do hereby give you notice, that the defendant has filed a statement confessing and admitting the amount claimed by you [and proposing to pay the same by instalments of                      ], 13 & 14 Vict. and that it will not be necessary for you to attend on the day c. 61, s. 8. of hearing [unless you object to receive the same by instalments as proposed], but judgment will not be entered unless you shall pay to the registrar on or before such day the sum of                      , being the fee for the judgment, or shall remit the 19 & 20 Vict. said sum to the registrar by post-office order or otherwise. c. 108, s. 78.

29. (Same as Form 133.—See p. 130.)

NOTICE TO PLAINTIFF OF ADMISSION OF PART OF CLAIM UNDER SECTION 8 OF THE 13 & 14 VICT. C. 61.

I do hereby give you notice, that the defendant has filed a statement confessing and admitting £                      , part of the



defendant should pay the same to the registrar on the  
 day of \_\_\_\_\_ [or by instalments of \_\_\_\_\_ for  
 every \_\_\_\_\_ days]:

And whereas default has been made in payment according to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found, within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this \_\_\_\_\_ day of  
 187 . By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
 and others the Bailiffs thereof.

|                                          | £ | s. | d. |
|------------------------------------------|---|----|----|
| Amount for which judgment was obtained   |   |    |    |
| Paid into court ... ..                   |   |    |    |
| Remaining due ... ..                     |   |    |    |
| Poundage for issuing this warrant ... .. |   |    |    |
| Total amount to be levied ... ..         |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at 19 & 20 Vict.  
 minutes past the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon c. 108, s. 46.  
 of the \_\_\_\_\_ day of 187 .

*This form will also apply to a warrant of execution upon a judgment under sect. 9 of the County Courts Act, 1850, 13 & 14 Vict. c. 61, s. 9; and by leaving out the words "and whereas default has been made in payment according to the said order," to a warrant of execution under a default summons.*



33. (*See p. 224.*)

## WARRANT OF EXECUTION AGAINST THE GOODS OF PLAINTIFF.

9 & 10 Vict.  
c. 95, s. 94.

Whereas at a court holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187 ; it was ordered by the court that judgment should be entered for the defendant [or that judgment of nonsuit be entered], and that the plaintiff should pay to the registrar of the court, on or before the \_\_\_\_\_ day of \_\_\_\_\_ the sum of £ \_\_\_\_\_ for the defendant's costs of suit :

And whereas default has been made in payment according to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the plaintiff, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the defendant under the said judgment, including the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the plaintiff which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 187 . By the Court,  
Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                   |        | £ | s. | d. |
|-----------------------------------|--------|---|----|----|
| Costs adjudged                    | ... .. |   |    |    |
| Paid into court                   | ... .. |   |    |    |
| Remaining due                     | ... .. |   |    |    |
| Poundage for issuing this warrant | ... .. |   |    |    |
| Total amount to be levied         | ... .. |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said plaintiff.

19 & 20 Vict.  
c. 108, s. 46.

Application was made to the registrar for this warrant at \_\_\_\_\_ minutes past the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of the \_\_\_\_\_ day of \_\_\_\_\_ 187 .

34. (*See pp. 127, 265.*)

## AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUBSTITUTED SERVICE.

I, J.S., of [address and description], make oath and say as follows:—

*State facts showing either that summons has come to the know*

ledge of defendant, or that he wilfully evades service of the same. Or, that upon inquiry at his usual place of abode, or at any other place where prior to the time when the plaint was entered he might probably have been met with, he could not be found so as to be served, and that in either case there is just ground to believe that he has gone out of the realm or otherwise absconded to avoid being served.

Then state deponent's means of knowledge of the facts deposed to.

Sworn, &c.

35. (See pp. 127, 266.)

ORDER FOR LEAVE TO PROCEED AS IF SERVICE HAD BEEN EFFECTED.

On the application of \_\_\_\_\_, and on reading the affidavit of \_\_\_\_\_, I do order that on \_\_\_\_\_ the plaintiff be at liberty to proceed as if the above defendant had been personally served in this action.

[Judge or Registrar.]

36. (See p. 126.)

NOTICE BY PLAINTIFF OF CONSENT TO ACCEPT INSTALMENTS.

(To be annexed to summons.)

[Title of Action.]

Take notice that payment of the amount sued for herein will be accepted by instalments of [state amount of instalment] payable on the [state the time or times at which the instalments will be accepted].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

[Plaintiff] or  
[Plaintiff's Solicitor] or  
[Plaintiff's Agent].

To the above-named [Defendant or Defendants].

37. (See p. 163.)

County Court of \_\_\_\_\_ holden at \_\_\_\_\_

Order xxxii.

LIST OF GENTLEMEN WHO HAVE CONSENTED TO ACT AS ASSESSORS IN THIS COURT UNDER SECTION 5 OF THE COUNTY COURTS ACT, 1875.

| No. | Name.     | Address. | Description. |
|-----|-----------|----------|--------------|
| 1   | A. B. ... |          |              |
| 2   | C. D. ... |          |              |
| 3   | E. F. ... |          |              |
| 4   | G. H. ... |          |              |
| 5   | I. K. ... |          |              |
| 6   | L. M. ... |          |              |
| 7   | N. O. ... |          |              |
| 8   | P. Q. ... |          |              |
| 9   | R. S. ... |          |              |
| 10  | T. V. ... |          |              |
| 11  | U. W. ... |          |              |
| 12  | X. Y. ... |          |              |

FORMS UNDER THE DEBTORS ACT, 1869,  
IN WHICH SPECIAL MATTER SHOULD BE PRINTED.

38. (*See pp. 238, 242.*)

CERTIFIED COPY OF ORDER OR JUDGMENT.

The County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
MINUTES OF JUDGMENTS, ORDERS, and other PROCEEDINGS at a Court held at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_ 187 , before \_\_\_\_\_ Judge of the said Court.

| No. | Plaintiff. | Appear-<br>ance. | Defen-<br>dant. | Appear-<br>ance. | Parti-<br>culars of<br>claim. | Amount<br>claimed. | Special<br>defence. | By whom<br>jury<br>required. | For whom<br>judgment<br>given. | Amount<br>of<br>judgment. | Costs. | Order. |
|-----|------------|------------------|-----------------|------------------|-------------------------------|--------------------|---------------------|------------------------------|--------------------------------|---------------------------|--------|--------|
|     |            |                  |                 |                  |                               |                    |                     |                              |                                |                           |        |        |

|                                                       |   |    |    |                                                                                                                                                                                     |
|-------------------------------------------------------|---|----|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amount of judgment or order, in-<br>cluding costs ... | £ | s. | d. | I hereby certify that the above is a true copy of an entry<br>in the minute-book, judgments, orders, and other proceedings<br>of the<br>holden at<br>_____ county court of<br>_____ |
| Subsequent costs ...                                  |   |    |    |                                                                                                                                                                                     |
| Paid into court ...                                   |   |    |    |                                                                                                                                                                                     |
| Total sum now due ...                                 |   |    |    |                                                                                                                                                                                     |
| Dated this _____ day _____ 187 .                      |   |    |    | Registrar.                                                                                                                                                                          |

*Note.*—If the judgment or order is entered in any minute or order book of a different form to the above, then the certificate must follow the form of such book.

## 39. (See p. 242.)

## JUDGMENT SUMMONS ON AN ORDER OR JUDGMENT OF A COUNTY COURT.

(The figures are inserted *ex. gr.*)

The Debtors Act, 1869.

In the [title of court issuing summons].

No. of Plaintiff.

No. of Judgment summons.

Between A.B., Plaintiff,

[Address, description,]

and

C.D., Defendant,

[Present address, description, and  
if known, place of employment.]

Whereas the plaintiff obtained a judgment [or if no judgment has been obtained, or if a fresh order has been obtained upon a judgment, an order] against you, the above-named defendant, in this court [or in the county court of \_\_\_\_\_, holden at \_\_\_\_\_] on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, for the payment of 10*l.* for debt [or damages] and costs, and subsequent costs have been incurred in pursuance thereof amounting to 15*s.*:

And whereas you have made default in payment of the sum payable in pursuance of the said judgment [or order]:

You are therefore hereby summoned to appear personally in this court at [place where court holden] on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon to be examined on oath by the court touching the means you have or have had since the date of the judgment [or order] to satisfy the sum payable in pursuance of the said judgment [or order]; and also to show cause why you should not be committed to prison for such default.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.  
Registrar of the Court.

|                                                                               | £  | s. | d. |
|-------------------------------------------------------------------------------|----|----|----|
| Amount of judgment, or order, and costs ...                                   | 10 | 0  | 0  |
| Costs of warrant against the goods, if any...                                 | 0  | 15 | 0  |
| Costs of previous judgment summonses, hearing,<br>and commitments, if any ... | 0  | 0  | 0  |
|                                                                               | 10 | 15 | 0  |

|                                                                                              | £ | s. | d. |
|----------------------------------------------------------------------------------------------|---|----|----|
| Deduct { Paid into court ...                                                                 | 1 | 0  | 0  |
| { Amounts which were not re-<br>quired to have been paid be-<br>fore the date of the summons | 4 | 15 | 0  |
|                                                                                              | 5 | 15 | 0  |
| Sum payable ...                                                                              | 5 | 0  | 0  |
| Costs of the summons ...                                                                     | 0 | 2  | 3  |

Amount upon the payment of which no further proceedings will be had until default in payment of next instalment ... 5 2 3

## 40. (See p. 244.)

ORDER UPON A JUDGMENT SUMMONS ALTERING ORIGINAL ORDER  
OR JUDGMENT.

The Debtors Act, 1869.

In the [title of court issuing summons].

No. of Plaintiff.

No. of Judgment summons.

Between A.B., Plaintiff,

[Address, description,]

and

C.D., Defendant,

[Present address, description, and  
if known, place of employment.]

Whereas the plaintiff obtained a judgment [or order] against the defendant in the county court of \_\_\_\_\_, holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187 , for the payment of £ \_\_\_\_\_, together with £ \_\_\_\_\_ for costs, and in payment thereof [or of \_\_\_\_\_ part thereof] the defendant hath made default:

[or, Whereas the plaintiff obtained a judgment against the defendant in ( \_\_\_\_\_ ) division of Her Majesty's High Court of Justice [or as the case may be] on the \_\_\_\_\_ day of \_\_\_\_\_, for the sum of £ \_\_\_\_\_, and there is now due and payable upon the said judgment the sum of \_\_\_\_\_]:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to appear personally at this court on the \_\_\_\_\_ day of \_\_\_\_\_ 187 , to be examined on oath touching the means he had then or had had since the date of the judgment [or order] to pay the said sum, which summons was proved to this court to have been personally and duly served on the defendant:

|                                          |       |       |       |                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------|-------|-------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acknowledgment of<br>payment into court. |       |       |       | It is ordered that the defendant do<br>pay the amount still due on the said<br>judgment, and the costs of the said<br>summons and its hearing, as stated at<br>the foot of this order, to the registrar<br>of this court, by instalments of £<br>_____ for every _____ days; the first<br>payment to be made on the<br>_____ day of _____ 187 . |
| Date.                                    | £     | s.    | d.    |                                                                                                                                                                                                                                                                                                                                                 |
| _____                                    | _____ | _____ | _____ |                                                                                                                                                                                                                                                                                                                                                 |
| _____                                    | _____ | _____ | _____ |                                                                                                                                                                                                                                                                                                                                                 |
| _____                                    | _____ | _____ | _____ |                                                                                                                                                                                                                                                                                                                                                 |
| _____                                    | _____ | _____ | _____ |                                                                                                                                                                                                                                                                                                                                                 |
| _____                                    | _____ | _____ | _____ |                                                                                                                                                                                                                                                                                                                                                 |

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

Registrar of the Court.

£ s. d.

Amount on judgment or order remaining due .

Costs of judgment summons and its hearing .

£ \_\_\_\_\_

## 41. (See p. 244.)

## ORDER OF COMMITMENT.

(The figures are inserted *ew. gr.*)

The Debtors Act, 1869.

In the [title of court ordering committal].

No. of Plaintiff.

No. of Judgment summons.

No. of Order.

Between A.B., Plaintiff,

and

C.D., Defendant.

To the High Bailiff and others the Bailiffs of the said Court and all Peace Officers within the jurisdiction of the said Court, to the Governor or Keeper of the [prison used by the Court].

Whereas the plaintiff obtained a judgment [or order] against the defendant in the county court of \_\_\_\_\_, holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, for the payment of 10*l.* for debt [or damages] and costs, and subsequent costs have been incurred in pursuance thereof amounting to 15*s.*:

And whereas the defendant hath made default in payment of 5*l.*, payable in pursuance of the said judgment [or order]:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to appear personally at this court on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, to be examined on oath touching

the means he had then or had had since the date of the judgment [or order] to satisfy the sum then due and payable in pursuance of the judgment [or order], and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been personally and duly served on the defendant:

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court that the defendant now has [or has had] since the date of the judgment [or order], the means to pay the sum then due and payable in pursuance of the judgment [or order], and has refused [or neglected] [or then refused or neglected] to pay the same, and the defendant has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered that, for such default as aforesaid, the defendant shall be committed to prison for \_\_\_\_\_ days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged, or shall file such affidavit as is mentioned in order xix., rule 20, of the County Court Rules, 1875.

These are therefore to require you, the said high bailiff, bailiffs, and others, to take the defendant, and to deliver him to the governor or keeper of the [prison used by the court], and you the said governor or keeper to receive the defendant.

and him safely keep in the said prison for                      days from  
the arrest under this order, or until he shall be sooner dis-  
charged by due course of law.

Given under the seal of                      this [insert date of order]  
date of                      187 .

*E.F.*,

Registrar of the Court.

|                                                                                    | £ | s. | d. |
|------------------------------------------------------------------------------------|---|----|----|
| Total sum payable at the time of issuing of the<br>judgment summons ... ..         | 5 | 2  | 3  |
| Hearing of summons, and poundage upon this<br>order ... ..                         | 0 | 10 | 0  |
|                                                                                    | 5 | 12 | 3  |
| Deduct amount paid into court subsequent<br>to the hearing of the judgment summons | 2 | 0  | 0  |
| Total sum upon payment of which the<br>prisoner will be discharged ... ..          | 3 | 12 | 3  |

#### FORMS IN WHICH SPECIAL MATTER NEED NOT BE PRINTED.

[NOTE.—For formal parts of these forms, see Nos. 1 to 6.]

#### 42. (See p. 99.)

##### UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

I, the undersigned *E.F.*, of                      , being the next friend of  
*A.B.*, who is an infant, and who is desirous of entering a plaint  
in this court against *C.D.*, of, &c., hereby undertake to be re-  
sponsible for the costs of the said *C.D.*, in such action, in  
manner following; namely, if the said *A.B.* fail to pay to the  
said *C.D.*, when and in such manner as the court shall order,  
all such costs of such action as the court shall direct him to  
pay to the said *C.D.*, I will forthwith pay the same to the  
registrar of the court.

Dated this                      day of                      186 .

*E.F.*

#### 43. (See p. 346.)

##### NOTICE TO HIGH BAILIFF OF FOREIGN COURT OF ORDER AGAINST HIM FOR NEGLECT.

Order ii.,  
rule 25.

Take notice, that on the application of the above-named  
plaintiff made this day, it is ordered that within                      days  
of the service of this order upon you, you do pay to me for the  
use of the said plaintiff the sum of £                      as compensation  
for loss of time and expense incurred by him owing to your  
neglect to return to me the copy summons herein.

Dated this                      of                      187 .

Registrar.

To the High Bailiff,  
County Court.





B.—*In an Action for a running Account of Small Items.*

(Seal.)

| Dates.     |                                                                                                             | £  | s. | d. |
|------------|-------------------------------------------------------------------------------------------------------------|----|----|----|
| From       | The plaintiff demands of you payment of this account :—                                                     |    |    |    |
| 17th Aug., | Butchers' meat supplied to you, full particulars entered in your pass-book [or, bills delivered weekly, or, |    |    |    |
| 187 , till | monthly, or, detailed account given to you]                                                                 |    |    |    |
| 12th Sept. |                                                                                                             |    |    |    |
| 187 .      | ... ..                                                                                                      | 18 | 6  | 2  |

C.—*In an Action on a Bill of Exchange or a Promissory Note.*

(Seal.)

| Dates.     |                                                                            | £  | s. | d. |
|------------|----------------------------------------------------------------------------|----|----|----|
| 187 .      | The plaintiff demands of you payment of this bill of exchange :—           |    |    |    |
| 17th June. | Bill drawn by Arthur Briggs for ... indorsed to plaintiff, accepted by you | 20 | 0  | 0  |
| 20th Sept. | Due.                                                                       |    |    |    |
|            | Interest 6 months ... ..                                                   | 0  | 10 | 0  |
|            | Noting and expenses ... ..                                                 | 0  | 4  | 3  |
|            |                                                                            | 20 | 14 | 3  |

D.—*In an Action for Breach of Contract.*

| Dates.           |                                                               | £  | s. | d. |
|------------------|---------------------------------------------------------------|----|----|----|
| 187 .            | The plaintiff demands of you these damages :—                 |    |    |    |
| In or about Feb. |                                                               |    |    |    |
| 2nd Sept.        | For non-delivery of a cargo of bricks as per agreement ... .. | 25 | 0  | 0  |
|                  | or                                                            |    |    |    |
| 3rd Oct.         | For breach of warranty on sale of a horse ... ..              | 25 | 0  | 0  |

E.—*In an Action of Tort.*

(Seal.)

| Dates.    |                                                                                                  | £  | s. | d. |
|-----------|--------------------------------------------------------------------------------------------------|----|----|----|
| 187 .     | The plaintiff demands of you these damages ... ..                                                | 12 | 0  | 0  |
| 17th Aug. | for injury caused to his carriage in the Strand by the carelessness of yourself or your servant. |    |    |    |

| Dates.                     |                                                                                                    |
|----------------------------|----------------------------------------------------------------------------------------------------|
| 187 .                      | <i>or</i>                                                                                          |
| 8th July.                  | For an assault committed by you on him.                                                            |
| 187 .                      | <i>or</i>                                                                                          |
| 7th March.                 | For illegally distraining his goods at [ <i>place</i> ].                                           |
|                            | <i>or</i>                                                                                          |
| 10th Oct.                  | For illegally arresting him.                                                                       |
| 187 .                      | <i>or</i>                                                                                          |
| During pre-<br>sent year   | For obstructing light and air from the windows of<br>his house at [ <i>description of house</i> ]. |
|                            | <i>or</i>                                                                                          |
| During last<br>six months. | For diverting, <i>or</i> obstructing, <i>or</i> fouling his water-<br>course at [ <i>place</i> ].  |
|                            | <i>or</i>                                                                                          |
| 187 .                      | For negligence as his solicitor in defending, at the                                               |
| April.                     | Kingston Assizes, the action brought against<br>him by Thomas BROWN.                               |

F.—*In an Action of Detinue, claiming Delivery of Specific Article\**

A. No. 45.

(Seal.)

| Date.       |                                       | £  | s. | d. |
|-------------|---------------------------------------|----|----|----|
| 187 .       | The plaintiff demands of you the de-  |    |    |    |
| 16th March. | livery of a specific bracelet belong- | 15 | 0  | 0  |
|             | ing to him, valued at ... ..          |    |    |    |
|             | and detained by you.                  |    |    |    |
|             | Special damages caused by their de-   | 2  | 0  | 0  |
|             | tention ... ..                        |    |    |    |
|             |                                       | 17 | 0  | 0  |

G.—*In an Action of Trover.*

(Seal.)

| Date.      |                                    | £  | s. | d. |
|------------|------------------------------------|----|----|----|
|            | The plaintiff demands of you these |    |    |    |
|            | damages, for having converted to   |    |    |    |
|            | your own use the following goods   |    |    |    |
|            | of his :—                          |    |    |    |
| 187 .      | A table, worth ... ..              | 5  | 0  | 0  |
| 10th Sept. | A piano ... ..                     | 12 | 0  | 0  |
|            | A bed ... ..                       | 3  | 10 | 0  |
|            |                                    | 20 | 10 | 0  |

H.—*In an Action for Services by House Agent giving Credit for Payments and Set-off.*

|             |                                                                            | (Seal) |    |    |
|-------------|----------------------------------------------------------------------------|--------|----|----|
| Dates.      |                                                                            | £      | s. | d. |
|             | The plaintiff demands of you payment of this account:—                     |        |    |    |
| 187 , Mrch. | Commission as house agent for selling your house No. 15, Regent Street ... | 57     | 10 | 0  |
|             |                                                                            | £      | s. | d. |
| Between     | By sundry payments ...                                                     | 35     | 0  | 0  |
| June 187 ,  | By set-off for bread and                                                   |        |    |    |
| and         | flour supplied by you as                                                   |        |    |    |
| Aug. 187 .  | per bill delivered ...                                                     | 8      | 17 | 8  |
|             |                                                                            | 43     | 17 | 8  |
|             | Balance due ...                                                            | 13     | 12 | 4  |

I.—*In an Action against an Executor charging Waste of Assets.*

| Dates.                |                                                                                                                                                                      | £  | s. | d. |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|
| From                  | The plaintiff demands of you, as executor of John Baker, payment of this medical account due to him from the testator:— [ <i>Set out account in ordinary form.</i> ] |    |    |    |
| Christmas, 187 , till |                                                                                                                                                                      |    |    |    |
| May, 1871.            | He states that you have wasted the testator's assets.                                                                                                                |    |    |    |
|                       | He therefore demands that his account be paid out of the testator's assets in your hands; or, if they are not sufficient, out of your own goods.                     |    |    |    |
|                       |                                                                                                                                                                      | 18 | 0  | 0  |

K.—*In an Action for recovering Possession of a tenement when Term has expired or been determined by Notice.*

|                            |                                                                                                                                                                                                          | A. No. 45.<br>(Seal.) |    |    |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----|----|
| Dates.                     |                                                                                                                                                                                                          | £                     | s. | d. |
| 187 .                      | The plaintiff demands of you:—                                                                                                                                                                           |                       |    |    |
| 7th Oct.                   | 1. Possession of the two rooms on first floor of No. 14, Brick Court, Haymarket, your interest as tenant of the premises to him having expired [ <i>or having been determined by a notice to quit.</i> ] |                       |    |    |
| Up to 7th Oct.             | 2. Rent of the same premises for eight weeks at 7s. a week... ..                                                                                                                                         | 2                     | 16 | 0  |
| From 7th Oct. to 17th Nov. | 3. Mesne profits for five weeks and six days ... ..                                                                                                                                                      | 2                     | 1  | 0  |
|                            | He also states that neither the rent nor the value [ <i>or that the rent or the value</i> ] of the premises exceeds 50 <i>l.</i> by the year.                                                            |                       |    |    |
|                            |                                                                                                                                                                                                          | 4                     | 17 | 0  |

L.—*In an Action for recovering Possession of a Tenement unless Rent in Arrear be paid.*

| Date.                        |                                                                                                                                                                                                                             | £  | s. | d. |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|
| Up to<br>Michaelmas<br>187 . | The plaintiff states that you are his tenant of No. 14, Brick Court, Haymarket; that your rent is in arrear for [state period not less than one half year]; and that he is entitled by law to re-enter for its non-payment. |    |    |    |
|                              | He therefore demands of you possession of the premises, unless you pay him the rent in arrear ... ..                                                                                                                        | 20 | 0  | 0  |
|                              | and the costs ... ..                                                                                                                                                                                                        |    |    |    |
|                              | He also states that neither the rent nor the value [or that the rent or the value] of the premises exceeds 50 <i>l.</i> by the year.                                                                                        |    |    |    |

M.—*In an Action of Ejectment.*

The plaintiff states that he is entitled to eject all persons from [describe by name, abuttals, or otherwise, the place in question].

He therefore demands of you possession of the premises.

He therefore states that neither the rent nor the value [or that the rent or the value] of the premises exceeds by the year.

N.—*In an Action by a Creditor to administer the Estate of a deceased Debtor.*

A. No. 45.  
(Seal.)

| Dates.     |                                                                                                                         | £  | s. | d. |
|------------|-------------------------------------------------------------------------------------------------------------------------|----|----|----|
| 187 .      | The plaintiff demands of you, as administrator of James Smith, payment of this account due to him from the intestate :— |    |    |    |
| 1st Feb.   | Coat, trousers, and vest ... ..                                                                                         | 7  | 10 | 0  |
| 14th Feb.  | Repairing coat ... ..                                                                                                   |    | 7  | 6  |
| 2nd March. | Livery for footman ... ..                                                                                               | 4  | 4  | 0  |
|            | Dress trousers... ..                                                                                                    | 1  | 15 | 0  |
|            | Or that the estate of the intestate may be administered under the order of the court.                                   |    |    |    |
|            | He also states that the estate to which this suit relates does not exceed 500 <i>l.</i> in value.                       |    |    |    |
|            |                                                                                                                         | 13 | 16 | 6  |

O.—*In an Action by a Legatee to administer the Estate of a Testator.*

| Dates.                            |                                                                                                                                                                                           | £  | s. | . |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|---|
| Of will,<br>15th June,<br>1862.   | The plaintiff demands of you, as executor of John Baker, payment of a legacy of ... .. due to him under the testator's will.                                                              | 30 | 0  | 0 |
| Of probate,<br>7th Sept.<br>187 . | Or that the estate of the testator may be administered under the order of the court.<br>He also states that the estate to which this suit relates does not exceed 500 <i>l.</i> in value. |    |    |   |

P.—*In an Action by a Beneficiary for Execution of a Trust.*

| Date.                          |                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Of deed,<br>1868.<br>1st June. | The plaintiff states that he is beneficially interested in a deed made between [ <i>describe parties shortly</i> ], and of which you are the trustee, and he demands that the trusts, so far as they relate to him, may be executed under the order of the court.<br>He also states that the estate to which the suit relates does not exceed 500 <i>l.</i> |

Q.—*In an Action for Foreclosure.*

| Dates.    |                                                    | £   | s. | d. |
|-----------|----------------------------------------------------|-----|----|----|
| 1869.     | The plaintiff demands of you the pay-              | 150 | 0  | 0  |
| 2nd Sept. | ment of ... .. due from you under a mortgage deed. |     |    |    |
| up to     | With interest ... ..                               | 20  | 0  | 0  |
| 187 .     | and costs ... ..                                   | 15  | 0  | 0  |
| Michael-  | Or that the mortgage be enforced by                |     |    |    |
| mas.      | foreclosure or sale, as the court shall direct.    |     |    |    |
|           |                                                    | 185 | 0  | 0  |

R.—*In an Action for Redemption.*

| Date.              |                                                                                                                                                                                                                                                                                                                         |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1869.<br>2nd Sept. | The plaintiff demands of you the redemption of [ <i>describe mortgaged premises</i> ], comprised in a mortgaged deed made between him and you, on payment of the principal money, interest, and costs due thereon.<br>He also states that the estate to which this suit relates does not exceed 500 <i>l.</i> in value. |

S.—*In a Suit for Specific Performance.*

Date.

187 .  
7th July.

The plaintiff demands the specific performance by you of an agreement to sell him a house, No. 24, Great Portugal Street.  
He also states that the estate to which this suit relates does not exceed 500*l.* in value.

T.—*In an Action by an Executor to obtain Judicial Interpretation of a Will.*A. No. 45.  
(Seal.)

Dates.

Of will,  
15th June,  
1862.  
Of probate,  
7th Sept.  
187 .

The plaintiff states that you [*or you severally*] claim a legacy of ... bequeathed by the testator's will "to George Gord, the son of — Gord;"

| £  | s. | d. |
|----|----|----|
| 50 | 0  | 0  |

*or*  
that you claim certain plate; *or* books, *or* trinkets, under a legacy bequeathed to you by the testator's will of "household furniture;"

And he demands that so much of the estate of the testator as relates to this legacy may be administered under the order of the court.

He also states that the estate to which this proceeding relates does not exceed 500*l.* in value.

U.—*In an Action by a Beneficiary for the Appointment by the Court of new Trustees.*

(Seal.)

Date.

Of Deed  
28th July  
18 .

The plaintiff states that he is beneficially interested in a deed made between [*describe parties shortly*]; that all the trustees are dead; and that no power exists of appointing others except on application to the court.

He therefore demands that new trustees may be appointed under the order of the court.

He also states that the estate to which this proceeding relates does not exceed 500*l.* in value.

V.—*In an Action for Advancement of an Infant.*

(Seal.)

Date.

18 .  
10 Oct.

The plaintiff, by his next friend, demands that you, as his trustee under the will [*or deed*] of [*name, address, and description*], do advance to him 100*l.* out of the trust fund for the purpose of paying for his outfit to India, or that the trust be administered under the order of the court.



W.—*In an Action for the Dissolution of Partnership.*

(Seal.)

| Date.                |                                                                                                                                                                                                                          |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Of Partnership Deed. | The plaintiff demands that an account of the partnership dealings between himself and you be taken; that the affairs of the partnership be wound up; and that the partnership be dissolved under the order of the court. |
| 18 .                 |                                                                                                                                                                                                                          |
| 1st May.             | He also states that the estate to which this suit relates does not exceed 500 <i>l.</i> in value.                                                                                                                        |

X.—*In an Action for Partition.*

(Seal.)

The plaintiff demands the partition of the farm called Knowlands, containing about seven acres, and situate in the parish of Kemsing, in Kent, which he now holds conjointly with you.

He also states that the estate to which this suit relates does not exceed 500*l.* in value.

Y.—*In an Action for Salvage.*

(Seal.)

| Date.     |                                        | £. | s. | d. |
|-----------|----------------------------------------|----|----|----|
| 187 .     | The plaintiff demands of you pay-      |    |    |    |
| 14th Oct. | ment of his claim of ... ..            | 20 | 0  | 0  |
|           | for salvage of your ship, the "Maria." |    |    |    |

Z.—*In an Action for Wages.*

(Seal.)

| Dates.       |                                   | £. | s. | d. |
|--------------|-----------------------------------|----|----|----|
| From         |                                   |    |    |    |
| 15th Jan.    | The plaintiff demands of you pay- |    |    |    |
| 187 .        | ment of his claim of ... ..       | 60 | 0  | 0  |
| to 10th Sep. | for wages in respect of services  |    |    |    |
| 187 .        | rendered on board your ship the   |    |    |    |
| 12th Jan.    | "Maria."                          |    |    |    |
| 187 .        | As per signed agreement.          |    |    |    |

AA.—*In an Action for Damage to Ship by Collision.*

(Seal.)

| Date.     |                                     | £.  | s. | d. |
|-----------|-------------------------------------|-----|----|----|
| 187 .     | The plaintiff demands of you these  |     |    |    |
| 10th Oct. | damages ... ..                      | 100 | 0  | 0  |
|           | for injury caused to his sloop the  |     |    |    |
|           | "Jane" by collision through the     |     |    |    |
|           | unskilful navigation of your steam- |     |    |    |
|           | boat the "Rapid."                   |     |    |    |

BB.—*In an Action for Freight.*

(Seal.)

| Date.         |                                                                                                                                                      | £  | s. | d. |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|
| 187 .<br>Aug. | The plaintiff demands of you for freight in conveying in his ship the "Jane"                    tons of coals for you from Newcastle to London... .. | 25 | 0  | 0  |

CC.—*In an Action against a Shipowner for Non-delivery of Cargo.*

(Seal.)

| Date.          |                                                                                                                                                            | £   | s. | d. |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|----|
| 187 .<br>Sept. | The plaintiff demands of you these damages ... .. for not delivering to him as per agreement the cargo of wheat which you undertook to convey from — to —. | 115 | 0  | 0  |

DD.—*In an Action against a Shipowner for negligent Stowage of Cargo.*

A. No. 45.

(Seal.)

| Date.          |                                                                                                                                                                                                                                   | £  | s. | d. |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|
| 187 .<br>Sept. | The plaintiff demands of you these damages ... .. for negligently stowing on board your ship "Jane" his skins, which you undertook to convey from Riga to London, and which in consequence of wet stowage were seriously injured. | 23 | 10 | 0  |

47. (See pp. 204, 216, 271.)

## NOTICE OF SURETIES.

Take notice, that the sureties whom I propose as my security in the above cause [here state the proceeding which has rendered the sureties necessary] are [here state the full names and additions of the sureties, whether housekeepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any].

Dated this                    day of                    187 .  
To the

48. (See p. 216.)

### AFFIDAVIT OF JUSTIFICATION.

I                                      of                                      one  
of the sureties for the defendant, make oath and say, that I  
am a housekeeper [*or freeholder as the case may be*], residing  
*[describing particularly the county or city, the*  
*street or place, and the number of the house, if any]*, that I  
am worth property to the amount of £                                      [*the*  
*amount required by the practice of the court*] over and above  
what will pay my just debts [*if security in any other action or*  
*for any other purpose, add,* and every other sum for which I  
am now security], that I am not bail or security in any other  
action or proceeding or for any other person [*or if security in*  
*any other action or actions, add, except for C.D., at the suit of*  
*E.F., in the court of*                                      *in the sum of* £

for *G.H.*, at the suit of *I.K.*, in the court of \_\_\_\_\_ in  
the sum of £ \_\_\_\_\_ specifying the several actions, with  
the courts in which they are brought and the sums in which  
he has become bound]; that this \_\_\_\_\_ my property, to the  
amount of the sum of £ \_\_\_\_\_ [and if security in any  
other action, &c., over and above all other sums for which I  
am now security as aforesaid], consists of [here specify the  
nature and value of the property in respect of which the deponent  
proposes to become bondsman as follows, stock-in-trade, in my  
business of \_\_\_\_\_ carried on by me at  
of the value of £ \_\_\_\_\_, of good book debts owing to me  
to the amount of £ \_\_\_\_\_ of furniture in my house at  
\_\_\_\_\_ of the value of £ \_\_\_\_\_ of a freehold [or leasehold]  
farm of the value of £ \_\_\_\_\_ situate at \_\_\_\_\_ occupied  
by \_\_\_\_\_ or of a dwelling-house of the value of £ \_\_\_\_\_  
situate at \_\_\_\_\_ occupied by \_\_\_\_\_ or of other property,  
particularising each description of property, with the value  
thereof], and that I have for the last six months resided at  
[describing the place of such residence, or if he has  
had more than one residence during that period, state it in the  
same manner as above directed.]

49. (See pp. 218, 268.)

BOND UNDER THE SUMMARY PROCEDURE ON BILLS OF  
EXCHANGE ACT, 1855.

18 & 19 Vict.  
c. 67.

Know all men by these presents, that we, *A.B.*, of, &c., and *C.D.*, of, &c., and *E.F.*, of, &c., are jointly and severally held and firmly bound to *G.H.*, of, &c., in £                      to be paid to the said *G.H.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this                      day of  
one thousand eight hundred and

Whereas an action has been brought in the county court of holden at wherein the above-named *G.H.* is plaintiff, and the above-bounden *A.B.* is defendant, on a certain bill of exchange [or promissory note] under the Summary Procedure on Bills of Exchange Act, 1855 :

And whereas leave has been duly given, according to the provisions of the said Act, to the said *A.B.* to defend the said action upon his giving security to be approved by the registrar of the court aforesaid, for the amount claimed in the said action and costs of trial thereof :

And whereas the above-named *C.D.* and *E.F.*, at the request of the said *A.B.*, have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by

the registrar of the said county court, as appears by his allowance in the margin hereof : Now the condition of this obligation is such, that if the above-bounden *A.B.*, *C.D.*, and *E.F.*, any or either of them, shall pay unto the said *G.H.*, his executors, administrators, or assigns, the amount claimed in the said action, and the costs of the trial thereof upon judgment being given for the plaintiff, then this obligation shall be void, otherwise shall remain in full force.

*A.B.* (L.S.)  
*C.D.* (L.S.)  
*E.F.* (L.S.)

I approve of  
 this bond.  
*I.K.*,  
 Registrar.  
 (L.S.)  
*This bond  
 requires a  
 stamp.*

Signed, sealed, and delivered by the above-bounden  
 in the presence of

NOTE.—If a deposit of money be made the memorandum 19 & 20 Vict.  
 thereof should follow the terms of the condition of the bond, and c. 108. s. 71.  
 will not require a stamp.

#### 50. (See p. 256.)

#### PARTICULARS OF PLAINTIFF'S DEMAND OR CAUSE OF ACTION IN ACTIONS OF CONTRACT ORDERED TO BE TRIED IN A COUNTY COURT.

In the County Court of holden at  
 Between *A.B.*

[Address and description,]  
 and

*C. D.*,

[Address and description.]

Being an action of contract commenced in Her Majesty's High 30 & 31 Vict.  
 Court of Justice, and sent by order of a judge at chambers under c. 142, s. 7.  
 section 7 of the County Courts Act, 1867, to be tried in this  
 court [here, where writ not specially endorsed, state the particu-  
 lars of the plaintiff's demand or cause of action according to the  
 facts, adding] above are the particulars of the plaintiff's  
 demand [or cause of action].

Dated this day of 187 .

*A.B.*, Plaintiff,  
 or  
*E.F.*, Plaintiff's Solicitor.

To the Registrar of the Court  
 and to the Defendant.

## 51. (See p. 256.)

## NOTICE OF TRIAL OF ACTION OF CONTRACT ORDERED TO BE TRIED IN A COUNTY COURT.

30 & 31 Vict.  
c. 142, s. 7.

Being an action of contract commenced in Her Majesty's High Court of Justice, and sent by order of a judge thereof under section 7 of the County Courts Act, 1867, to be tried in this court.

Take notice that this action will be tried at a court to be holden on the                      day of                      at  
o'clock in the forenoon.

Dated this                      day of                      187 .  
Registrar of the Court.

The Plaintiff and Defendant.

[To the notice sent to the defendant the registrar must annex a copy of the plaintiff's particulars of demand or cause of action where given.]

## 52. (See p. 259.)

## STATEMENT OF PLAINTIFF'S CAUSE OF ACTION IN ACTIONS OF TORT REMITTED FOR TRIAL IN A COUNTY COURT.

In the County Court of                      holden at

Between A.B., Plaintiff,

[Address and description.]

and

C.D., Defendant,

[Address and description.]

30 & 31 Vict.  
c. 142, s. 10.

Being an action of tort commenced in Her Majesty's High Court of Justice, and remitted by order of a judge thereof under section 10 of the County Courts Act, 1867, to be tried in this court.

This action is brought :

Malicious  
prosecution.

A. For that the defendant maliciously and without reasonable or probable cause laid an information before E.F., a justice of the peace for the county of                      against the plaintiff for having feloniously stolen a bushel of wheat belonging to the defendant, upon which charge the plaintiff was committed to the county gaol at                      , and was there imprisoned two months, and the defendant afterwards maliciously and without reasonable or probable cause, caused the plaintiff to be prosecuted, indicted, and tried at the last assizes for the said county upon the said charge, when the plaintiff was acquitted, and the prosecution came to an end, by reason whereof the plaintiff was injured in his person and character, and was put to expense in defending himself against the said charges; and the plaintiff claims 100*l.* damages.

Illegal  
arrest.

B. For that the defendant wrongfully and unlawfully gave the plaintiff into the custody of a policeman, and caused him to be handcuffed, and to be imprisoned in a police-station, and thence to be taken in custody to a police-office, and there to be further imprisoned, whereby the plaintiff was put to expense



## 53. (See p. 260.)

NOTICE OF TRIAL OF ACTION OF TORT REMITTED FOR TRIAL IN  
A COUNTY COURT.

30 & 31 Vict. c. 142, s. 10. Being an action of tort commenced in Her Majesty's High Court of Justice, and remitted by order of a judge thereof, under section 10 of the County Courts Act, 1867, to be tried in this court.

Take notice that this action will be tried at a court to be holden on the                      day of                      at                      o'clock in the forenoon.

[N.B.—To the notice sent to the defendant the registrar must annex a copy of the statement of the plaintiff's cause of action.]

## 54. (See p. 150.)

## AFFIDAVIT FOR DISCOVERY.

I, A.B., the above-named plaintiff [or defendant], make oath and say as follows: (*Here set out in paragraphs the documents, and that the deponent is advised and believes that it is material and necessary for him, in order to support his claim upon the trial, to have such documents produced to him, and that he will derive material advantage and support from their production, and that he is advised and believes that he is entitled to their production, and that he believes that the said documents are in the possession or power of the defendant*).

## 55. (See p. 150.)

## ORDER FOR DISCOVERY.

Upon reading an affidavit by the plaintiff [or defendant], a copy of which is annexed, marked A, I do order that the plaintiff [or defendant] do within                      days answer an affidavit, stating what documents he has in his possession or power relating to the matters in dispute in this cause, and what he knows as to the custody they or any or either of them are in, and whether he objects, and if so, on what grounds, to the production of such as are in his possession or power.

And I further order, that the costs of this application and of the discovery shall be costs in the cause.

## 56. (See p. 151.)

## AFFIDAVIT IN OBEDIENCE TO ORDER FOR DISCOVERY.

I                      of                      the above-named plaintiff [or defendant], make oath and say,—

1. That the documents hereinafter set forth are to the best of my knowledge and belief the only documents in my possession or power relating to the matters in dispute in this action, and the same are in my possession, viz.:—

A letter from                      to                      dated

An agreement purporting to be between E.F. and G.H., dated



2. I do not object to the production of the said documents, or any or either of them.

[Or I object to the production of the said documents [*or if not to all, but to some of them, state which*], on the following grounds, that is to say [*here state the grounds of objection*].]

57. (See p. 154.)

INTERROGATORIES AFFIDAVIT.

We, *A.B.*, of the above-named plaintiff  
[*or defendant*], and *L.M.*, of solicitor in this cause  
for the said plaintiff [*or defendant*], make oath and say, first,

And I, the said *A.B.*, for myself say,—

1. That I believe that I shall derive material benefit in this cause from the discovery which I seek by the interrogatories which I require to be delivered herein.

2. That I believe that I have a good cause of [*or defence to this*] action on the merits.

*L.M.* / And I the said *M.B.* say,—

3. That the plaintiff [*or defendant*] will derive material benefit by the discovery which he seeks by interrogatories.

4. That I believe that the plaintiff [*or defendant*] has a good cause of [*or defence to this*] action on the merits.

58. (See p. 155.)

ORDER FOR AN ORAL EXAMINATION.

Upon hearing the parties, their attorneys or agents [*or counsel*] on both sides, I do order that the plaintiff [*or defendant*] do attend before the registrar of this court at on the day of 18, at o'clock in the noon, to be by him orally examined as to the points mentioned in the paper-writing hereunto annexed, the plaintiff's [*or defendant's*] answers to the interrogatories delivered to him in this action being insufficient in such points. [*Add where any documents are to be produced*: And I do further order that the plaintiff [*or defendant*] do produce to the said registrar at the same time and place the following documents [*here describe them shortly*].]

I further order that the costs of the examination, and of the proceedings herein, as may be taxed by the registrar, shall be paid by [*or shall abide the event, or as otherwise ordered*].

Dated this day of 18 .

59. (See p. 141.)

NOTICE OF SET-OFF.

Take notice, that the defendant intends at the hearing of 9 & 10 Vict. this cause to claim a set-off against the plaintiff's demand, the c. 95, s. 76. particulars of which set-off are annexed hereto.



61. (*See pp. 142, 260.*)

NOTICE TO BE GIVEN BY DEFENDANT UNDER 6 & 7 VICT. C. 96,  
s. 1, IN AN ACTION FOR LIBEL OR SLANDER REMITTED FOR  
TRIAL IN A COUNTY COURT.

Being an action for libel [*or slander*] commenced in Her Majesty's High Court of Justice, and remitted by order of a judge thereof under section 10 of the County Courts Act, 1867, to be tried before this court.

Take notice, that the defendant on the trial of this action will give in evidence in mitigation of damages that he made [*or offered an apology to the plaintiff for the libel [or slander]*] complained of before the commencement of the action [*or as soon after the commencement of the action as he had an opportunity of doing so*].

To the Registrar of the Court  
and to the Plaintiff.

62. (*See pp. 142, 260.*)

NOTICE TO BE GIVEN BY DEFENDANT UNDER 6 & 7 VICT. C. 96,  
s. 2, IN AN ACTION FOR LIBEL REMITTED FOR TRIAL IN A  
COUNTY COURT.

Being an action for libel commenced in Her Majesty's Court of  
at Westminster, and remitted by order of a judge thereof under section 10 of the County Courts Act, 1867, to be tried before this court.

Take notice, that the defendant on the trial of this action will give in evidence and rely upon the following ground of defence; (that is to say),

That the libel was inserted in the newspaper called or known by the name of without actual malice and without gross negligence, and that before the commencement of the action [*or as soon after the commencement of the action as he had an opportunity of doing so*] the defendant inserted in the said newspaper [*or offered to publish in any newspaper or periodical publication to be selected by the plaintiff*] a full apology for the said libel, and that the defendant has paid into court £ by way of amends for the injury sustained by the plaintiff by the publication of the said libel.

Dated this                      day of                      187 .  
C.D., Defendant,  
or

To the Registrar of the Court                      E.F., Defendant's Solicitor.  
and to the Plaintiff.

[N.B.—If the libel was published in any periodical publication other than a newspaper, alter the notice accordingly.]

63. (*See p. 98.*)

NOTICE BY PLAINTIFF THAT JUDGMENT MAY BE SIGNED AGAINST  
INDIVIDUAL MEMBERS OF A FIRM.

[*Title of Action.*]

Take notice, that on the hearing of this action the court will be asked to order judgment against each of you whom I rule 9. Order 7.,



## 66. (See p. 149.)

NOTICE TO PLAINTIFF OF DEFENDANT'S CLAIM AGAINST A  
THIRD PARTY.

[Title of Action.]

Take notice, that the above-named defendant has filed a claim, a copy whereof is hereto annexed, whereby he claims *[contribution, indemnity, or, as the case may be]*, by *[state name and address and description of third party]*, towards *[or against, or in respect of, as the case may be,]* any sum which you may recover against him in this action. Order x.,  
rule 1.

And take notice that if you desire the direction of the judge as to the conduct of the action, or as to any proceedings or notices therein, you must file in this office a written application for that purpose, and thereupon apply to the judge before trial, and you must also give four days' notice of your intention to make such application to all parties interested. You may also apply to the judge at the hearing to disallow the defendant's claim.

Dated this                      of                      187 .  
Registrar of the Court.  
To the above-named Plaintiff.

## 67. (See p. 147.)

NOTICE TO DEFENDANT OF NON-SUFFICIENCY OF AFFIDAVIT  
UNDER ORDER XI., RULE 5.

Take notice, that the affidavit filed by you does not disclose a good defence to this action on the merits thereof, and you must therefore attend the court in pursuance of your summons *[or where the affidavit has accompanied the notice of defence required by a default summons]*, upon the day mentioned in the notice sent herewith]. Order xi.,  
rule 5.

Dated this                      of                      187 .  
Registrar of the Court.  
To the above-named Defendant.

## 68. (See p. 147.)

NOTICE TO PLAINTIFF TO DEPOSIT SUM IN COURT UNDER  
ORDER XI., RULE 5.

[Title of Action.]

Take notice, that the above-named defendant (whose residence or place of business is more than twenty miles distant from this court) having filed with me an affidavit disclosing a good defence to this action upon the merits, you are required within two days from the date hereof to deposit in court the sum of £                      , to abide the event of this action. And also take notice that in default of your making such deposit as directed the action will be struck out. Order xi.,  
rule 5.

Dated this                      of                      187 .  
Registrar of the Court.  
To the above-named Plaintiff.

## 69. (See p. 147.)

NOTICE TO DEFENDANT OF DEPOSIT UNDER ORDER XI., RULE 5,  
HAVING BEEN MADE, OR NOT HAVING BEEN MADE.

[*Title of Action.*]

Order xi.,  
rule 5.

Take notice, that the plaintiff has this day deposited with me the sum of £ , to abide the event of this action.

Or, take notice that the plaintiff has not deposited with me any sum of money to abide the event of this action. The action will be struck out and you need not attend the court in pursuance of your summons.

Dated this                      of                      187 .

Registrar of the Court.

To the above-named Defendant.

## 70. (See p. 157.)

ORDER FINING A WITNESS FOR NON-ATTENDANCE.

9 & 10 Vict.  
c. 95, s. 86.

Whereas                      of                      was duly summoned to appear as a witness in this cause at a court this day holden, and at the time of being so summoned payment [*or a tender of payment*] of his expenses was made according to the scale of allowance settled by the rules of practice of the county courts:

And whereas he has neglected without sufficient cause shown to appear at the court [*or to produce*] [*here describe what he was required by such summons to produce*]: *or* (a) Whereas

being this day present in court, and being required by the court to give evidence in this cause, refused to be sworn, without alleging as a ground for such refusal that he had any conscientious scruples with respect to taking an oath [*or, after being duly sworn, refused to give evidence*] [*or to produce*] [*here describe what he was required and bound to produce*]: It is hereby ordered that the said                      shall forthwith [*or on the*                      day of                      ] pay to the registrar of this court a fine of £                      for such neglect [*or refusal*].

## 71. (See p. 157.)

WARRANT OF EXECUTION AGAINST THE GOODS OF A WITNESS  
FOR A FINE.

9 & 10 Vict.  
c. 95, ss. 86,  
87.

Whereas                      was duly summoned to appear as a witness in this cause at a court holden at                      on the                      day of                      18 , and at the time of being so summoned payment [*or a tender of payment*] of his expenses was made, according to the scale of allowance settled by the rules of practice of the county courts; and whereas he neglected, without sufficient cause shown, to appear at such court [*or to produce*] [*here describe what he was required and bound to produce*]: *or* (a) Whereas                      being present in court

(a) Where witness is present in court, commence form here.

on the                      day of                      18   , and being required by the court to give evidence, refused to be sworn without alleging as a ground for such refusal that he had any conscientious scruples with respect to taking an oath [*or* after being duly sworn refused to give evidence, *or* to produce, &c.], it was thereupon ordered by the court that he should forthwith [*or* on the                      day of                      18   ] pay to the registrar of this court a fine of £                      for such neglect [*or* refusal] ; and whereas the said sum has not been paid according to the said order, and the judge of this court has ordered it to be levied as hereinafter mentioned: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said wheresoever they may be found, within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount of such fine and the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to him which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of this Court, this                      day of                      187   .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                                                                                                    | £ | s. | d. |
|--------------------------------------------------------------------------------------------------------------------|---|----|----|
| Amount of fine                      ...                      ...                      ...                      ... |   |    |    |
| Poundage for issuing this warrant                      ...                      ...                                |   |    |    |
| Total                      ...                      ...                                                            |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said witness.

Application was made to the registrar for this warrant at 19 & 20 Vict. c. 103, s. 46.  
minutes past the hour of                      in the                      noon  
of the                      day of                      187   .

## 72. (See p. 157.)

### AFFIDAVIT TO OBTAIN A WARRANT TO BRING UP A PRISONER.

I                      of                      the plaintiff [*or* defendant] make 19 & 20 Vict. oath and say, that the above cause is appointed to be tried at c. 103, s. 31, this court on the                      day of                      187   , and that



*E.F.*, now a prisoner confined in [*state the prison*], will be a material witness for me upon the said trial. And I further say, that I am advised and verily believe that I cannot safely proceed to the trial of the said cause without the testimony of the said *E.F.* And I do hereby make application to the judge of this court for a warrant, in order that the said *E.F.* may be brought before this court to be examined as a witness on my behalf.

### 73. (See p. 157.)

#### WARRANT TO BRING UP A PRISONER TO GIVE EVIDENCE.

To [*officer in whose custody the prisoner is*].

19 & 20 Vict.  
c. 108, s. 31.

Whereas the plaintiff [*or defendant*] hath made application to me, by affidavit, for a warrant to bring up before this court *E.F.*, who it is said is detained as a prisoner in your custody, in order that the said *E.F.* may be examined as a witness on behalf of the said plaintiff [*or defendant*] in a certain cause depending in this court between the said *A.B.*, plaintiff, and *C.D.*, defendant: You are therefore hereby required to bring the said *E.F.* before this court at [*court-house*] on the day of 187, at o'clock in the noon, then and there to be examined as a witness on behalf of the said plaintiff [*or defendant*]; and immediately after the said *E.F.* shall have given his testimony before this court, that you safely conduct him the said *E.F.* to the prison from which he shall have been brought under this warrant.

### 74. (See p. 172.)

#### ORDER FOR CHANGING VENUE.

19 & 20 Vict.  
c. 108, ss. 20,  
22.

It is ordered, that the venue in the above cause be changed, and that the cause be sent for hearing to the county court of holden at

To the Plaintiff and Defendant.

### 75. (See p. 172.)

#### NOTICE BY COURT TO WHICH AN ACTION HAS BEEN SENT OF THE DAY OF TRIAL.

19 & 20 Vict.  
c. 108, ss. 20,  
22.

Take notice, that the above cause has been sent for trial to this court, and that it is appointed to be tried in this court on the day of 187, at the hour of noon.

To the Plaintiff and Defendant.

### 76. (See p. 137.)

#### NOTICE OF OBJECTION TO JURISDICTION.

19 & 20 Vict.  
c. 108, s. 39.

Take notice, that under the provisions of section 39 of the County Courts Act, 1856, I object to this action being tried in the county court; and I propose as my sureties [*here state the full names and additions of the sureties, whether house-keepers or freeholders, and their residences for the last six*

months, therein mentioning the county or city, places, streets, and numbers if any] [or, and I propose to deposit a sum of money in lieu of giving sureties].

Defendant.

To the Registrar of the said Court.

77. (See pp. 138, 218.)

BOND WHERE NOTICE OF OBJECTION TO JURISDICTION GIVEN.

Know all men by these presents, that we, *A.B.*, of, &c., and *C.D.*, of, &c., and *E.F.*, of, &c., are jointly and severally held and firmly bound to *G.H.*, of, &c., in £ to be paid to the said *G.H.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

19 & 20 Vict.  
c. 108, s. 39.  
A sum sufficient to cover the amount claimed, and costs of trial in High Court of Justice, not exceeding in the whole 150*l.*

Sealed with our seals, and dated this day of one thousand eight hundred and

Whereas an action has been brought in the county court of holden at wherein the above-named *G.H.* is plaintiff, and the above-bounden *A.B.* is defendant :

For Notice of Sureties and Affidavit of Justification, see forms 15 and 16.

And whereas the said *A.B.* has given due notice to the said *G.H.* of his the said *A.B.*'s objection to the said action being tried in the said court, as provided by section 39 of 19 & 20 Vict. c. 108 :

And whereas it is by the same section of the said statute provided, that the party who shall object shall give security, to be approved by the registrar of the court aforesaid, for the amount claimed, and the costs of trial in the High Court of Justice :

And whereas the above-named *C.D.* and *E.F.*, at the request of the said *A.B.*, have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof : Now the condition of this obligation is such, that if the above-bounden *A.B.*, *C.D.*, and *E.F.*, any or either of them shall pay unto the said *G.H.*, his executors, administrators, or assigns, the costs of the trial in the High Court of Justice, and the amount for which a verdict may pass against the said *A.B.*, then this obligation shall be void, otherwise shall remain in full force.

High Court of Justice.  
I approve of this bond.  
*I.K.*,  
(L.S.)  
Registrar.  
This bond requires a stamp.

*A.B.* (L.S.)  
*C.D.* (L.S.)  
*E.F.* (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.

19 & 20 Vict.  
c. 108, s. 71.

## 78. (See pp. 17, 280.)

CONSENT THAT COURT SHALL DECIDE IN AN ACTION WHERE  
TITLE HAS INCIDENTALLY COME IN QUESTION.

19 & 20 Vict.  
c. 108, s. 25. We [*or the respective solicitors of*], the plaintiff and de-  
fendant, do hereby, under the provisions of section 25 of the  
County Courts Act, 1856, consent that this action shall be  
decided by the judge of this court.

Given under our hands, this                      day of                      187 .  
Plaintiff [*or 's Solicitor*].  
Defendant [*or 's Solicitor*].

## 79. (See p. 254.)

NOTICE TO BE SENT TO BOTH PARTIES OF TRIAL WHERE CAUSE  
SENT DOWN BY HIGH COURT OF JUSTICE.

19 & 20 Vict.  
c. 108, s. 26. Whereas, under the provision of section 26 of the County  
Courts Act, 1856, an action commenced in the court of [*name*  
*of superior court*], wherein A.B., of, &c., is plaintiff, and C.D., of,  
&c., is defendant, has been ordered by [*name of judge of superior*  
*court*] to be tried in this court:

Take notice, that the said action will be tried in this court  
on the                      day of                      of                      at the hour  
of                      in the                      noon.

To Plaintiff and Defendant.

## 80. (See p. 162.)

## APPLICATION FOR ASSESSORS.

|                        |                   |
|------------------------|-------------------|
| In the County Court of | No. of Plaintiff. |
| Between                | holden at         |
|                        | Plaintiff,        |
|                        | and               |
|                        | Defendant.        |

Order xxxii.  
rule 7. The plaintiff [*or defendant*] applies to have this action tried  
with an assessor [*or assessors*], and he submits to the judge  
the name of No. 1, A.B., merchant [*or as the case may be*], [*or*  
No. 4, G.H., and No. 9, R.S.], as fit persons to be summoned to  
act as assessors.

(a) The defendant [*or plaintiff*] consents to the appointment  
of the assessors herein named, as appears by his consent thereto  
filed herewith.

Dated this                      of                      187 .  
Plaintiff [*or Defendant*].

*Memorandum of Consent by Judge.*

I consent to try this action with the assistance of the  
assessors [*or as the case may be*].

Judge.

(a) *When the other party does not consent, strike this paragraph out.*

81. (*See p. 162.*)

## SUMMONS TO ASSESSORS.

In the County Court of                      holden at  
No. .

[*Title of Action.*]

(*Seal.*)

The                      day of                      187 .

Sir,

You are hereby summoned to attend and serve as an assessor Order xxxii.  
in this court on the                      day of                      187 , at the rule 8.  
hour of                      in the                      noon, to assist the judge of  
the court in the hearing and determination of this action under  
section 5 of the County Courts Act, 1875.

I am, sir,

Your obedient servant,

Registrar.

To                      , of                      .

82. (*See p. 162.*)

NOTICE TO OPPOSITE PARTY OF NAMES OF ASSESSORS SUGGESTED  
BY PARTY APPLYING THAT THE ACTION SHOULD BE TRIED  
WITH THEIR ASSISTANCE.

Take notice that the plaintiff [*or defendant*] having applied Order xxxii.  
to the judge for the appointment of assessors to assist him in rule 9.  
trying this action, the judge is willing that it should be so tried.

Below are the names of the assessors the plaintiff [*or de-  
fendant*] desires should be summoned.

Should you have any objection to their acting as assessors,  
you must forthwith send me in writing your reasons for your  
objection, and must mention the names of any other of the  
assessors of this court whom you are willing should be sum-  
moned.

Should you have no objection to the assessors named being  
summoned, you must forthwith sign this notice and return it  
to me.

No. 1, A.B., of                      , Merchant.

No. 4, G.H., of                      , Merchant.

The plaintiff [*or defendant*] has no objection to make to the  
above assessors being summoned.

(*Signature.*)

83. (*See p. 162.*)

NOTICE OF SITTING TO HEAR OBJECTIONS RAISED BY ONE PARTY  
TO THE ASSESSORS NAMED BY THE OTHER.

[*Title of Action.*]

Take notice that the judge [*or I*] will on the                      day of Order xxxii.  
187 , at the hour of                      in the                      noon, rule 9.  
sit at No.                      Street to hear the objections made by the  
plaintiff [*or defendant*] to the undermentioned persons being  
summoned to act as assessors in this action.

Dated this                      of                      187 .

Registrar of the Court.

To the above-named Plaintiff and Defendant.

## 84. (See p. 162.)

## ORDER UPON HEARING OBJECTION TO PROPOSED ASSESSORS.

[Title of Action.]

Order xxxii.  
rule 10. Upon the hearing of the objections made by the plaintiff [*or defendant*] to the undermentioned persons being summoned to act as assessors in this action [*here insert order*].

By the Court,

Registrar.

## 85. (See p. 236.)

SUMMONS WHERE A DEFENDANT SUED BY AN ASSIGNEE HAS HAD NOTICE THAT THE ASSIGNMENT IS DISPUTED BY THE ASSIGNOR.

Order xxi.,  
rule 9. Whereas the defendant in this action has had notice from you that you dispute the assignment of the subject-matter in dispute between the plaintiff and the defendant in this action [*or that you claim the subject-matter in this action*]:

You are therefore summoned to appear at a court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, when the dispute [*or claim*] between you and the plaintiff will be determined, and judgment be given determining the rights and claims of the plaintiff, the defendant, and yourself.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

Registrar.

To E.F., of [*here insert address and description of the person to be summoned.*]

## 86. (See p. 237.)

SUMMONS WHERE A DEFENDANT SUED BY AN ASSIGNEE HAS HAD NOTICE THAT THE ASSIGNMENT IS DISPUTED BY THE ASSIGNOR, AND HAS PAID DEBT AND COSTS INTO COURT.

Order xxi.,  
rule 10. Whereas the defendant has had notice that you dispute the assignment of the subject-matter in this action:

And whereas he has paid into court the sum of £ \_\_\_\_\_ being the amount claimed by the action, and the sum of £ \_\_\_\_\_ for costs:

This is to give you notice that you must appear at a court to be holden on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, when the court will adjudicate.

## 87. (See p. 236.)

ORDER WHERE ASSIGNMENT IS INVALID.

No. of Plaint.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_

Between A.B., Plaintiff,

C.D., Defendant,

and

E.F., made party by summons, dated \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ .

It is this day adjudged, touching the dispute to the assign- Order xxi.,  
 ment of the subject-matter of this action to the plaintiff, that rule 9.  
 there is no such assignment as alleged, and that the said *E.F.*  
 do recover against the plaintiff the said sum of £  
 for costs, and that the defendant do recover against the  
 plaintiff the sum of £ for costs.

It is further adjudged that the said *E.F.* do recover against  
 the defendant the sum of £ for debt, and the sum of  
 £ for costs.

It is ordered that the plaintiff do pay the sum of £  
 and the sum of £ to the registrar on, &c.

And it is further ordered that the defendant do pay the sum  
 of £ to the registrar, &c.

### 88. (See p. 236.)

#### ORDER WHERE ASSIGNMENT IS VALID.

No. of Plaintiff.

[*Heading as in last Form.*]

It is this day adjudged touching the dispute to the assign- Order xxi.,  
 ment of the subject-matter of this action to the plaintiff, that rule 9.  
 the said assignment is good, and that the plaintiff do recover  
 against *E.F.* the sum of £ for costs; and that the  
 defendant do recover from the said *E.F.* the sum for costs.

It is further adjudged that the plaintiff do recover against  
 the defendant the sum of £ for debt, and £  
 for costs.

It is ordered that *E.F.* do pay the sum of £ and the  
 sum of to the registrar of the court, on the day  
 of

And it is further ordered that the defendant do pay the sum  
 of £ to the registrar on the day of  
 [or by instalments of for every days, the first  
 instalment to be paid on the day of 18 ].

### 89. (See p. 236.)

#### ORDER WHERE ASSIGNMENT IS INVALID AND DEFENDANT FILES A COUNTER CLAIM AGAINST PLAINTIFF.

[*Heading as in Form 87.*]

It is this day adjudged touching the dispute to the assign- Order xxi.,  
 ment of the subject-matter of this action to the plaintiff, that rule 9.  
 there is no such assignment as alleged, and that the counter  
 claim of £ against the plaintiff by the defendant  
 is sustained.

It is adjudged that the assignor do recover against the  
 defendant the sum of £ for debt, together with  
 the sum of £ for costs.

It is further adjudged that the defendant do recover  
 against the plaintiff the sum of £ in respect of his  
 counter claim, and the sum of £ for costs.

It is ordered that the defendant do pay the sum of £  
together with the sum of £ to the registrar on, &c.,  
It is further ordered that the plaintiff do pay the sum of  
£ and the sum of £ to the registrar  
on, &c.

90. (*See p. 160.*)

## REGISTRAR'S NOTICE OF JURY.

9 & 10 Vict.  
c. 95, s. 70.

Take notice, that this cause will be tried by a jury, the  
having demanded a jury therein.

91. (*See p. 161.*)

## SUMMONS TO JURORS.

9 & 10 Vict.  
c. 95, s. 72.

In the County Court of holden at .  
You are hereby summoned to appear and serve as a juror in  
this court at the on the day of  
187 , at the hour of in the noon, upon  
the trial of the cause or causes to be then and there tried  
by jury, and in default of attendance you will be liable to a  
penalty of 5*l.*, under section 72 of the County Courts Act, 1846.  
Given under the seal of the Court this of  
187 .

Registrar of the Court.

To  
of

92. (*See p. 161.*)

## ORDER FINING A JUROR FOR NON-ATTENDANCE.

9 & 10 Vict.  
c. 95, s. 72.

In the County Court of holden at .  
Whereas was duly summoned to appear and  
serve this day as a juror in this court, upon the trial of the  
cause or causes to be tried by jury at this court; and whereas  
he has neglected, without sufficient cause shown, to appear  
and serve as a juror at this court: It is hereby ordered, that  
he shall forthwith [*or on the* day of ]  
pay to the registrar of this court a fine of £ for such  
neglect.

93. (*See p. 161.*)WARRANT OF EXECUTION AGAINST THE GOODS OF A JUROR FOR  
A FINE.

9 & 10 Vict.  
c. 95, s. 87.

Whereas was duly summoned to appear and  
serve as a juror at a court holden on the day of  
upon the trial of any cause or causes to be then  
and there tried by jury:

And whereas he neglected, without sufficient cause shown,  
then to appear and serve as a juror at such court, it was there-  
upon ordered by the court that he should forthwith [*or on the*  
day of ] pay to the registrar of this court a  
fine of £ for such neglect:



And whereas the said sum has not been paid according to the said order, and the judge of this court has ordered it to be levied as hereinafter mentioned; these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said \_\_\_\_\_ wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*) the sum stated at the foot of this warrant, being the amount of such fine and the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to him, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

[*Conclude as in warrant against a witness.*]

94. (*See p. 173.*)

ORDER TO ADJOURN PROCEEDINGS.

It is ordered that the trial of this action be adjourned until 19 & 20 Vict.  
the \_\_\_\_\_ day of \_\_\_\_\_ 187 , at \_\_\_\_\_ o'clock c. 108, s. 81.  
in the \_\_\_\_\_ noon.

95. (*See p. 99.*)

ORDER APPOINTING GUARDIAN NAMED BY INFANT DEFENDANT.

Whereas now, at the hearing of this cause, the defendant, being an infant, appears here in court, and names \_\_\_\_\_ of \_\_\_\_\_ to act as his guardian, who now assenting to act as such guardian, is hereby appointed to be guardian of the defendant to act on his behalf in this cause.

96. (*See p. 99.*)

ORDER APPOINTING GUARDIAN OF INFANT DEFENDANT WHERE DEFENDANT DOES NOT NAME A GUARDIAN.

Whereas now at the hearing of this cause, the defendant, being an infant, appears here in court, and does not name a guardian, *E.F.*, of \_\_\_\_\_ is hereby appointed to be guardian of the defendant to act on his behalf in this cause.

97. (*See pp. 198, 201.*)

AGREEMENT NOT TO APPEAL.

We [or the respective solicitors or agents of] the above- 19 & 20 Vict.  
named plaintiff and defendant, do hereby, under the provisions c. 108, s. 6<sup>1</sup>.

of section 69 of the County Courts Act, 1856, agree that the decision of the judge of this court in this action shall be final.

Given under our hands this                      day of                      .

Plaintiff [*or* 's Solicitor].

Defendant [*or* 's Solicitor].

### 98. (*See p. 237.*)

#### NOTICE OF DESIRE TO EXAMINE DEFENDANT AS TO CERTAIN DEBTS DUE TO HIM.

Order xxiv.

I the above-named plaintiff am desirous, should I succeed in obtaining a judgment against the defendant, of having him examined forthwith after I have obtained such judgment, as to whether or not the following debts are due to him from the following persons; viz.:

*E.F.*, of                      for goods sold and delivered.

*G.H.*, of                      for work done.

(Signed)                      *A.B.*,  
Plaintiff.

To the Registrar  
of the above Court.

### 99. (*See p. 238.*)

#### ORDER WHEN GARNISHEE PRESENT.

Whereas the plaintiff has obtained a judgment against the defendant for the sum of £                      [*here insert the amount of judgment*]:

Upon examination of the defendant and *E.F.*, of                      it is ordered that all debts due and owing or accruing due from the said *E.F.* to the above-named defendant shall be attached to answer the said judgment debt.

And it is further ordered, that the said *E.F.* do pay into court the sum of                      being the amount of the debt due from him to the above-named defendant [*or being so much of the debt due from him to the above-named defendant as is sufficient to satisfy the said judgment debt*] on the day of                      .

### 100. (*See p. 238.*)

#### SUMMONS UPON A GARNISHEE.

[*Heading as in No. 11.*]

Whereas the plaintiff at a court holden at                      on the                      day of                      18                      , obtained a judgment against *C.D.*, of [*name, address, and description*] for the sum of                      for                      and costs, which judgment remains unsatisfied: And whereas the plaintiff having filed an affidavit stating that you are indebted to the said *C.D.*, you are hereby summoned to appear at a court holden at                      on the                      day of                      18                      , at the hour of                      in the                      noon, to show cause why an order should not be made upon you for the payment of the amount of the said judgment, or so much thereof as shall equal the amount of the debts due and owing and accruing from you to the said *C.D.*

And further take notice, that if you shall pay to the registrar of the court the amount of such debts, or so much thereof as will satisfy the judgment debt, you will incur no costs.

To the Defendant.

## JUDGMENT AGAINST GARNISHEE.

It is ordered, that the plaintiff do recover against the defendant the sum of £ [here insert the amount of the judgment debt, or so much thereof as the debts amount to when the same are less than the judgment debt,] and £ for costs, amounting together to the sum of £ [or that the plaintiff do pay the sum of £ for defendant's costs].

It is ordered that the defendant [or plaintiff] do pay the same to the registrar of the court on the \_\_\_\_\_ day of \_\_\_\_\_ 18, [or, where judgment for plaintiff, and the judge so order], by instalments of \_\_\_\_\_ for every \_\_\_\_\_ days; the first instalment to be paid on the \_\_\_\_\_ day of \_\_\_\_\_ 18.

## EXECUTION AGAINST GARNISHEE.

Whereas on the                      day of                      18    it was ordered that E.F. should pay into court the sum of £                      being the [or so much of the] amount of debts found due from him to C.D. of [here insert address and description], a judgment debtor of A.B. [or as is sufficient to satisfy the judgment of the said A.B.]; and whereas default has been made in payment according to the said order; these are therefore [the same as in ordinary executions].

## 103. (See p. 255.)

CERTIFICATE OF THE RESULT OF THE HEARING OF A CAUSE  
SENT AFTER ISSUE JOINED FOR TRIAL TO A COUNTY COURT.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
 19 & 20 Vict. I hereby certify, that an action commenced in the High  
 c. 108, s. 26. Court of Justice wherein A.B. is plaintiff, and C.D. is defend-  
 ant, which, under section 26 of the County Courts Act, 1856,  
 was ordered by a judge thereof to be tried in this court, has  
 been heard accordingly in this court, on this day, and that the  
 result was as follows :

[State the finding on the several issues joined in the action, or  
 that the plaintiff was nonsuited.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 Registrar of the Court.

## 104. (See p. 197.)

## ORDER TO SUSPEND ORDER OF JUDGMENT.

9 & 10 Vict. It is ordered, that an order of this court in this action, bear-  
 c. 95, s. 105. ing date the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_, be sus-  
 pended until the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_.

## 105. (See pp. 81, 135.)

ORDER FOR COSTS OF THE DAY WHERE RULE FOR A CERTIORARI  
OR PROHIBITION HAS NOT BEEN SERVED.

19 & 20 Vict. Whereas a rule [or summons] has been granted by [name of  
 c. 108, s. 40. division of High Court of Justice or judge] requiring cause to  
 be shown why a writ of certiorari [or prohibition] should not  
 issue in this cause, and no order has been made by such court  
 [or judge] respecting the costs in this court :

And whereas a copy of such rule [or summons] has not been  
 served on the plaintiff [or defendant] [or on the registrar],  
 according to section 40 of the County Courts Act, 1856 :

And whereas the plaintiff [or defendant] has on this day ap-  
 peared at this court to prosecute [or defend] this cause :

It is ordered, that the defendant [or plaintiff] do pay the  
 sum of £ \_\_\_\_\_ for the plaintiff's [or defendant's] costs of  
 the day, and it is ordered that the defendant [or plaintiff] do  
 pay the same to the registrar of the court on the  
 day of \_\_\_\_\_ 187 \_\_.

## 106. (See pp. 81, 135.)

ORDER FOR COSTS OF THE DAY WHERE A WRIT OF CERTIORARI  
OR PROHIBITION HAS NOT BEEN LODGED.

19 & 20 Vict. Whereas a writ of certiorari [or prohibition] has been  
 c. 108, s. 41. granted in this cause by [name of division of High Court of  
 Justice or judge], on the ex parte application of the defendant  
 [or plaintiff], who has not lodged it with the registrar of the  
 court [or has not given notice to the plaintiff [or defendant]  
 that it has issued] two clear days before this day, being the  
 day fixed for hearing this cause :

And whereas the said [superior court or judge] has made no order respecting the costs of the cause in this court :

And whereas the plaintiff [or defendant] has on this day appeared at this court to prosecute [or defend] this cause :

It is ordered, that the defendant [or plaintiff] do pay the sum of £                for the plaintiff's [or defendant's] costs of the day ; and it is ordered that the defendant [or plaintiff] do pay the same to the registrar of the court on the day of                187 .

107. (See pp. 195, 197.)

ORDER FOR A NEW TRIAL.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties on [set out the terms or conditions, if any, on which the order is made].

108. (See pp. 195, 197.)

ORDER TO RESCIND A FORMER ORDER.

It is ordered that the order of this court in this action, bearing date the                day of                18                , be rescinded. 9 & 10 Vict.  
c. 95, s. 100.  
This sect. is  
repealed.

109. (See p. 233.)

INTERPLEADER SUMMONS TO EXECUTION-CREDITOR.

[Heading as in No. 11.]

Whereas [here insert the name, address, and description of claimant, so far as is then known] hath made a claim to [certain goods and chattels [or monies, &c.] taken in execution under process issuing out of this court, at your instance] [or, certain rent alleged to be due to him] : 30 & 31 Vict.  
c. 142, s. 31.

You are therefore hereby summoned to appear at a court to be holden at                on the                day of                18                , at the hour of                in the                noon, when the said claim will be adjudicated upon, and such order made thereupon as to the judge shall seem fit.

Dated this                day of                18                .

Registrar of the Court.

To the Execution-Creditor.

NOTE.—The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the registrar of this court, four days before the day of hearing.

110. (See p. 233.)

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM TO THE GOODS OR THE PROCEEDS THEREOF.

[Name, address, and description of claimant], you are hereby summoned to appear at a court to be holden at

on the                      day of                      18                      , at the hour of  
                                          in the                      noon, to support a claim made by  
 you to certain goods and chattels [*or monies, &c.*] taken in  
 execution under process issued in this action at the instance  
 of [*the execution-creditor*], and in default of your then estab-  
 lishing such claim the said goods and chattels will then be  
 sold [*or the said monies, &c. paid over*] according to the  
 exigency of the said process; and take notice, that you are  
 hereby required, five days before the said day, to deliver to  
 the officer in charge of the said process, or leave at my office,  
 particulars of the goods and chattels which [*or the proceeds*  
*whereof*] are claimed by you, and of the grounds of your  
 claim; and in such particulars you shall set forth fully your  
 name, address, and description; and take notice, that in the  
 event of your not giving such particulars as aforesaid your  
 claim will not be heard by the court.

To [*the claimant above named*].

### 111. (*See p. 233.*)

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM  
 TO RENT IN RESPECT OF THE PREMISES UPON WHICH THE  
 EXECUTION WAS LEVIED.

[*Name, address, and description of claimant*], you are hereby  
 summoned to appear at a court to be holden at  
 on the                      day of                      18                      , at the hour of  
                                          in the                      noon, to support a claim made by you  
 to certain rent alleged by you to be due to you in respect of  
 and issuing out of certain premises upon which certain goods  
 and chattels were taken in execution under process of this court  
 in this action at the instance of [*the execution creditor*]; and  
 in default of your then establishing such claim the said goods  
 and chattels will then be sold, and the proceeds thereof paid  
 over according to the exigency of the said process [*or, if such*  
*goods and chattels shall have been then sold, then the pro-*  
*ceeds of such sale will be paid over according to the exigency*  
*of the said process*]; and take notice that you are hereby  
 required, five days before the said day, to deliver to the officer  
 in charge of the said process, or leave at my office, particulars  
 of the amount of the rent claimed by you, and of the period  
 for which and of the premises in respect of which you claim  
 such rent, and of the grounds of your claim; and in such par-  
 ticulars you shall set forth fully your name, address, and  
 description; and take notice, that in the event of your not  
 giving such particulars, your claim will not be heard by the  
 court.

To [*the claimant above named*].

### 112. (*See p. 233.*)

INTERPLEADER SUMMONS TO AN EXECUTION-CREDITOR, AND TO  
 THE HIGH BAILIFF WHERE CLAIMANT CLAIMS DAMAGES AS  
 WELL AS THE GOODS SEIZED.

Insert re-                      Whereas *E.F.*, of                      hath made a claim to  
 sidence and certain goods and chattels [*or monies, &c.*] taken in execution

under process issuing out of this court at your instance, and description  
hath also claimed from you and from the high bailiff of this of claimant.  
court the sum of £ for damages arising out of  
the said execution :

You and the high bailiff are therefore hereby summoned to  
appear at a court to be holden at the  
day of 18 , at the hour of in the  
noon, when the said claim, both as to the said goods  
and chattels, and as to the said damages, will be adjudicated  
upon, and such order made thereupon as to the judge shall  
seem fit.

To the Execution-Creditor, and to  
the High Bailiff of this Court.

NOTE.—*The claimant is called upon to give the particulars of  
his claim, which you may inspect, on application at the office of  
the registrar of this court, four days before the day of hearing.*

### 113. (See p. 233.)

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM  
TO DAMAGES, AS WELL TO THE GOODS OR THE PROCEEDS  
THEREOF.

[*Name, address, and description of claimant*], you are hereby  
summoned to appear at a court to be holden at on  
the day of 18 , at the hour of in  
the noon to support a claim made by you to certain  
goods and chattels [*or monies, &c.*] taken in execution under  
process issued in this action at the instance of [*the execution-  
creditor*], and also for damages arising out of such execution, and,  
in default of your then establishing such claim, the said goods  
and chattels will then be sold [*or the said monies paid over*],  
according to the exigency of the said process; and take notice  
that you are hereby required, five days before the said day, to  
deliver to the officer in charge of the said process, or leave at  
my office, particulars of the goods and chattels which [*or the  
proceeds whereof*] are claimed by you, and of the grounds of  
your claim, and also of the grounds upon which you claim  
damages, and you must also state in such particulars the amount  
of the damages you claim, and the party from whom you claim  
the same, and in such particulars you shall set forth fully your  
name, address, and description; and take notice that in the  
event of your not giving such particulars as aforesaid your  
claim will not be heard by the court.

To [*the claimant above named*].

### 114. (See p. 232.)

ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM IS  
NOT ESTABLISHED.

Between A.B., Plaintiff,  
and  
C.D., Defendant,  
and  
E.F., Claimant.

It is this day adjudged touching the claim of E.F.  
to certain goods and chattels [*or monies, &c.*] taken



in execution in this action [*or to certain rent alleged to be due to him*], that the said goods and chattels [*or monies, &c., or part thereof, to wit, &c., specifying them,*] are the property of the execution-debtor [*or that there is no rent due to the said E.F.*].

And it is ordered, that the costs of this proceeding, amounting to            be paid by the said *E.F.* to the registrar of this court on or before the            day of            for the use of the execution-creditor.

### 115. (*See p. 232.*)

#### ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM IS ESTABLISHED.

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action [*or to certain rent alleged to be due to him*], that the said goods and chattels [*or monies, &c., or part thereof, to wit, specifying them,*] are his property [*or that rent to the amount of £            is due to him*].

And it is ordered, that the said [*execution-creditor*] do pay to the registrar of this court, for the use of the said *E.F.*, £            for costs, on or before the            day of            18   .

### 116. (*See p. 232.*)

#### ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO NEITHER IS ESTABLISHED.

|                                |                     |                   |                   |
|--------------------------------|---------------------|-------------------|-------------------|
|                                |                     |                   | No. of Plaintiff. |
| In the County Court of         |                     |                   | holden at         |
| ( <i>Seal.</i> )               |                     |                   |                   |
| Between <i>A.B.</i>            | ...    ...          | ...    Plaintiff, |                   |
|                                | and                 |                   |                   |
| <i>C.D.</i>                    | ...    ...          | ...    Defendant. |                   |
| And between <i>E.F.</i>        | ...    ...          | ...    Claimant,  |                   |
|                                | and                 |                   |                   |
| The Execution-Creditor and the |                     |                   |                   |
| High Bailiff of this Court     | ...    Respondents. |                   |                   |

It is this day adjudged touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action, and for damages arising out of the said execution, and which *E.F.* claims against [*the execution-creditor*] and the high bailiff of this court, that the said goods and chattels [*or monies, &c., or part thereof, describe the part,*] are the property of [*the execution-debtor,*] and that the said *E.F.* is not entitled to recover any damages from either [*the execution-creditor*] or the high bailiff of this court :

And it is ordered that the costs of this proceeding, amounting to £            , be paid by the said *E.F.* to the registrar of this court on or before the            day of            187   , as to £            , part thereof, for the use of the execution-creditor, and as to £            , the residue thereof, for the use of the high bailiff of this court.

117. (*See p. 232.*)

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO BOTH IS ESTABLISHED.

[*Same heading as No. 116.*]

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action, and for damages arising out of the said execution, and which *E.F.* claimed against the high bailiff of this court, that the said goods and chattels [*or monies, &c., or part thereof, specifying them*] are the property of *E.F.*, and that *E.F.* is entitled to recover the sum of £                      for damages arising out of the said executions against the high bailiff of this court: If the claim for damages be against the execution-creditor as well as against the high bailiff, so state it.

And it is ordered that the high bailiff of this court do pay the said sum of                      for damages, and the sum of £                      for costs, and the execution-creditor the sum of £                      for costs, to the registrar of this court, for the use of the said *E.F.*, on or before the                      day of                      18 .

To the Execution-Creditor and  
the High Bailiff of this Court.

118. (*See p. 232.*)

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED AND THE CLAIM TO THE GOODS IS, BUT THAT TO DAMAGES IS NOT, ESTABLISHED.

[*Same heading as No. 116.*]

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action, and for damages arising out of the said execution, and which *E.F.* claims against the execution-creditor, and the high bailiff of this court, that the said goods and chattels [*or monies, &c., or part thereof, specifying them*] are the property of the said *E.F.*, but that the said *E.F.* is not entitled to recover any damages from either the execution-creditor or the high bailiff of this court :

And it is ordered that the execution-creditor do pay to the registrar of this court, on or before the                      day of                      18 , the sum of                      for costs for the use of the said *E.F.*, and that the said *E.F.* do pay to the registrar of this court, on or before the                      day of                      18 , the sum of £                      for costs, for the use of the high bailiff of this court.

To the Execution-Creditor and  
to *E.F.*, the Claimant.

119. (*See p. 232.*)

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED AND THE CLAIM TO THE GOODS IS NOT, BUT THE CLAIM TO DAMAGES IS, ESTABLISHED.

[*Same heading as No. 116.*]

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this This may arise where

the bailiff is action, and for damages arising out of the said execution, and guilty of which *E.F.* claims against the execution-creditor and the high bailiff of this court, that the said goods and chattels [or some wrong-ful act in taking prop-erty of the execution-debtor out of the pos-session of the claimant] are the property of the execution-debtor, and that the said *E.F.* is entitled to recover £ for damages from the high bailiff of this court, but not any damages from the execution-creditor:

And it is ordered that the said *E.F.* do pay to the registrar of this court, on or before the day of 18 , the sum of £ for costs, for the use of the execution-creditor, and that the high bailiff of this court do pay to the registrar of this court, on or before the day of 18 , the sum of £ for costs, for the use of the said *E.F.*

To *E.F.*, the Claimant, and  
the High Bailiff.

### 120. (See p. 235.)

#### CLAIM OF AN EXECUTION-CREDITOR FOR DAMAGES FROM A HIGH BAILIFF.

30 & 31 Vict.  
c. 112, s. 31. £ Take notice that I, the execution-creditor, claim the sum of £ from you the high bailiff of this court, for damages arising out of a certain execution in this cause, and that the grounds of my claim are as follows: [*here state the grounds of the claim e.g., for that you, having seized certain goods and chattels of and belonging to the execution-debtor, under process issued from this court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution*].

Dated this day of 18 .

To the High Bailiff Execution-Creditor.  
of this Court.

### 121. (See pp. 232, 235.)

#### ORDER ON AN INTERPLEADER SUMMONS BY EXECUTION-CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM TO DAMAGES IS ESTABLISHED.

|                                        |             |                   |
|----------------------------------------|-------------|-------------------|
| In the County Court of                 | holden at   | No. of Plaintiff. |
|                                        |             | (Seal.)           |
| Between <i>A.B.</i> ... ..             | Plaintiff,  |                   |
|                                        | and         |                   |
| <i>C.D.</i> ... ..                     | Defendant.  |                   |
| And between the Execution-Creditor ... | Claimant,   |                   |
|                                        | and         |                   |
| The High Bailiff of this Court ... ..  | Respondent. |                   |

It is this day adjudged touching the claim of the execution-creditor in this cause, against the high bailiff of this court, or damages arising out of an execution in this

cause in which process issued from this court at the instance of the said                      the execution-creditor, directing the high bailiff to levy the sum of £                      of and from the goods and chattels of                      [*the execution-debtor*], that the said                      the execution-creditor, is entitled to recover from the high bailiff of this court the sum of £                      for damages arising out of the said execution.

And it is ordered that the high bailiff of this court do, on or before the                      day of                      18                      , pay to the registrar of this court the said sum of £                      and also the further sum of £                      for costs for the use of the said                      , the execution-creditor.

To the High Bailiff  
of this Court.

122. (*See pp. 232, 235.*)

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION-CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM TO DAMAGES IS NOT ESTABLISHED.

[*Same heading as No. 121.*]

It is this day adjudged touching the claim of                      the execution-creditor in this cause, against the high bailiff of this court, for damages arising out of an execution in this cause in which process issued from this court at the instance of the said                      the execution-creditor, directing the said high bailiff of this court to levy the sum of £                      of and from the goods and chattels of                      [*the execution-debtor*], that the said                      the execution-creditor, is not entitled to recover from the said high bailiff of this court any damages in respect of or in any way arising from the said execution. And it is ordered that the said                      the execution-creditor, do on or before the                      day of                      18                      , pay to the registrar of this court the sum of £                      for costs, for the use of the said high bailiff of this court.

To                      the Execution-Creditor.

123. (*See p. 232.*)

ORDER ON INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED, AND THE MONEY PAID INTO COURT IS FOUND TO BE SUFFICIENT TO SATISFY THE DAMAGES.

[*Same heading as No. 121.*]

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action, and for damages arising out of the said execution, and which *D.F.* claimed against the high bailiff of this court, and in respect of which damages hath paid into court the sum of

£ , that the said goods and chattels [*or monies, &c., or part thereof, specifying them or it*] are the property of *E.F.*, but that the said sum paid into court is sufficient to satisfy all damages arising out of the said execution.

And it is ordered, that the execution-creditor do pay to the registrar of this court the sum of £ for costs for the use of *E.F.*, and that *E.F.* do pay to the registrar of this court the sum of £ for costs for the use of the high bailiff, on or before the day of 18 .  
To the Execution-Creditor and to *E.F.*

124. (*See p. 232.*)

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED, AND THE MONEY PAID INTO COURT IS ADJUDGED INSUFFICIENT.

[*Same heading as No. 121.*]

It is this day adjudged, touching the claim of *E.F.* to certain goods and chattels [*or monies, &c.*] taken in execution in this action, and for damages arising out of the said execution, and which *E.F.* claims against the high bailiff, and in respect of which damages has paid into court the sum of £ , that the said goods and chattels [*or monies, &c.*] are the property of the said *E.F.*, and that the said sum of £ paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said *E.F.* is entitled to recover the further sum of £ for damages from the high bailiff.

And it is ordered that the execution-creditor do pay to the registrar of this court, on or before the day of 18 , the sum of £ for costs for the use of the said *E.F.*, and that the high bailiff do pay to the registrar of this court, on or before the last-mentioned day, the said further sum of £ for damages, and also the sum of £ for costs, for the use of the said *E.F.*  
To the Execution-Creditor and the High Bailiff.

125. (*See pp. 232, 235.*)

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION-CREDITOR AGAINST A HIGH BAILIFF FOR DAMAGES, AND WHEN THE HIGH BAILIFF PAYS MONEY INTO COURT.

[*Same heading as No. 121.*]

It is this day adjudged, touching the claim of the execution-creditor in this cause against the high bailiff of this court for damages arising out of an execution in this cause, in which process issued from this court at the instance of the said the execution-creditor, directing the said high bailiff of this court to levy the sum of

of and from the goods and chattels of [the execution-debtor], and in respect of which damages the high bailiff hath paid into court the sum of £ , that the sum paid into court is sufficient to satisfy all damages arising out of the said execution [or that the sum paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said the execution-creditor, is entitled to recover the further sum of £ for damages from the high bailiff].

And it is ordered that the said , the execution-creditor, do pay to the registrar of this court, on or before the day of 18 , the sum of £ for costs for the use of the high bailiff [or that the high bailiff do pay to the registrar of this court, on or before the day of 18 , the said further sum of £ for damages, and also the sum of £ for costs, for the use of the execution-creditor].

To the Execution-Creditor  
[or To the High Bailiff of this Court].

### 126. (See p. 235.)

#### WARRANT OF EXECUTION AGAINST THE GOODS OF CLAIMANT.

Whereas at a court holden at on the day of 18 , the plaintiff, by the judgment of the said court, recovered against the defendant the sum of £ for debt [or damages] and for costs: 9 & 10 Vict. c. 95, s. 118.

And whereas the defendant by an order of the court was ordered to pay the same to the registrar of the court:

And whereas default having been made in payment according to the said order, an execution issued against the goods of the defendant, under which certain goods and chattels were seized, in respect of which *E.F.*, of, &c., made claim, and which claim was heard and decided upon at a court held at on the day of 18 , and it was adjudged that the goods so seized under the said execution were the property of the defendant [or that certain rent alleged by the said *E.F.*, of, &c., to be due to him was not so due]:

And it was ordered that the costs of that proceeding, amounting to the sum of £ should be paid by the claimant to the registrar of the said court, on or before the day of 18 .

And whereas default has been made in payment according to the said last-mentioned order:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said claimant wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the said claimant or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and

any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the claimant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this                      day of  
18 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                             | £ | s. | d. |
|---------------------------------------------|---|----|----|
| Costs adjudged      ...      ...      ...   |   |    |    |
| Poundage for issuing this warrant      ...  |   |    |    |
| Total amount to be levied      ...      ... |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said claimant.

19 & 20 Vict.  
c. 108, s. 46. Application was made to the registrar for this warrant at  
minutes past the hour of                      in the  
noon of the                      day of                      18 .

### 127. (See pp. 204, 218.)

#### BOND WHERE A PLAINTIFF IS APPELLANT.

A sum sufficient to cover the costs of appeal, say 20*l.*, being double the estimated amount.

Know all men by these presents that we, *A.B.*, of, *§c.*, and *C.D.* of, *§c.*, and *E.F.* of, *§c.*, are jointly and severally held and firmly bound to *G.H.*, of, *§c.*, in £                      , to be paid to the said *G.H.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

For Notice of Sureties and Affidavit of Justification, see forms 47 and 48.

Sealed with our seals, and dated this                      day of  
one thousand eight hundred and

Whereas an action                      is now depending in the county court of                      holden at                      wherein the above-bounden *A.B.* is plaintiff and the above-named *G.H.* is defendant :

And whereas the said action came on to be tried in the said court on the                      day of                      when a judgment was given for the said *G.H.* :

And whereas the said *A.B.*, being dissatisfied with such judgment, gave due notice to the said *G.H.* of his the said *A.B.*'s intention to appeal from the same to Her Majesty's High Court of Justice, according to the statute in such case made and provided :

And whereas it is thereby provided that the party who shall



appeal as aforesaid shall give security, to be approved by the registrar of the court aforesaid, for the costs of the appeal, whatever be the event thereof:

And whereas the above-named *C.D.* and *E.F.*, at the request of the said *A.B.*, have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof: now the condition of this obligation is such, that if the above-bounden *A.B.*, *C.D.*, and *E.F.*, any or either of them, shall pay unto the said *G.H.*, his executors, administrators, or assigns, the costs of the said appeal, as the said high court shall order, then this obligation shall be void, otherwise shall remain in full force.

I approve  
of this bond.  
*J.K.*,  
Registrar.  
(L.S.)  
*This bond  
requires a  
stamp.*

*A.B.* (L.S.)  
*C.D.* (L.S.)  
*E.F.* (L.S.)

Signed, sealed, and delivered by the above-bounden  
in the presence of

NOTE. *If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.* 19 & 20 Vict. c. 108, s. 71.

## 128. (See pp. 204, 218.)

### BOND WHERE DEFENDANT IS APPELLANT.

Know all men by these presents that we, *A.B.*, of, *§c.*, and *C.D.*, of, *§c.*, and *E.F.*, of, *§c.*, are jointly and severally held and firmly bound to *G.H.*, of, *§c.*, in £ to be paid to the said *G.H.*, or his certain solicitor, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of  
one thousand eight hundred and

Whereas an action is now depending in the  
county court of holden at wherein  
the above-named *G.H.* is plaintiff, and the above-bounden *A.B.*  
is defendant:

And whereas the said action came on to be tried in the said  
court on the day of last, when a  
judgment was given for the said *G.H.* in the sum of £:

And whereas the said *A.B.*, being dissatisfied with such  
judgment, gave due notice to the said *G.H.* of his the said  
*A.B.*'s intention to appeal from the same to Her Majesty's High  
Court of Justice, according to the statute in such case made  
and provided:

And whereas it is thereby provided that the party who shall  
appeal as aforesaid shall give security, to be approved by the  
registrar of the court aforesaid, for the costs of the appeal,  
whatever be the event thereof, and also for the amount of the  
judgment if such party be the defendant, and the appeal be  
dismissed:

A sum suf-  
ficient to  
cover the  
costs of  
appeal, say  
20*l.*, being  
double the  
estimated  
amount,  
and also  
double the  
amount of  
judgment.

*This bond  
requires a  
stamp.*

And whereas the above-named *C.D.* and *E.F.*, at the request of the said *A.B.*, have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by

I approve of this bond.  
*I.K.*,  
 Registrar.  
 (L.S.)

(a) To be omitted, if amount previously paid into court.

the registrar of the said county court, as appears by his allowance in the margin hereof: now the condition of this obligation is such, that if the above-bounden *A.B.*, *C.D.*, and *E.F.*, any or either of them, shall pay unto the said *G.H.*, his executors, administrators, or assigns, the costs of the said appeal, as the said high court shall order (and shall also in case the said appeal shall be dismissed, pay to the said *G.H.*, his executors, administrators, or assigns, the said sum of £ [amount of the judgment (a)],) then this obligation shall be void, otherwise shall remain in full force.

*A.B.* (L.S.)  
*C.D.* (L.S.)  
*E.F.* (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

19 & 20 Vict. c. 108, s. 71. NOTE.—If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.

### 129. (See p. 206.)

#### CASE ON APPEAL.

13 & 14 Vict. c. 61, s. 15. In the County Court of holden at  
 On appeal to the Court of

Between *A.B.*, Plaintiff,  
 and  
*C.D.*, Defendant.

This is an action [here state the cause of action and the facts].  
 The question for the opinion of the court of

is:—

First. [Here state the question for the opinion of the court.]  
 [Signature of judge.]

130 to 135 same as 26 to 31.

### 136. (See p. 108.)

#### NOTICE TO DEFENDANT WHERE ANY CHANGE OF PLAINTIFF.

Order xv., rule 5. Whereas *A.B.*, at a court holden at on the day of 18, obtained a judgment against you for the sum of £ for and costs, which judgment now remains unsatisfied: and whereas the said *A.B.* has since died [or, as the case may be], and *E.F.*, of [address and description] is his executor [or state other representative character], this is to give you notice that the name of the said *E.F.* has been substituted as plaintiff for that of the original plaintiff, and that he is at liberty therefore to take the same

proceedings on the judgment that the original plaintiff was entitled to take.

£      s.      d.

Due on judgment ... : :

To the Defendant.

[N.B.—Where the judgment in the original cause was for the defendant, and he has died, or as the case may be, the above form must be altered accordingly.]

### 137. (See p. 109.)

#### SUMMONS IN NATURE OF SCIRE FACIAS WHERE ANY CHANGE OF DEFENDANT.

Whereas the plaintiff, at a court holden at \_\_\_\_\_ on Order xv.,  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, obtained a judgment against \_\_\_\_\_ rule 7.  
C.D., of [name, address, and description of C.D.], for the sum of  
£ \_\_\_\_\_ for \_\_\_\_\_ and costs, which judgment now remains  
unsatisfied: and whereas the said C.D. has since died [or state  
cause of revival being necessary], and you are his executor [or  
state other representative character], you are hereby summoned  
to appear at a court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day  
of \_\_\_\_\_ 18\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
to show cause why judgment should not be entered up against  
you, at the suit of the plaintiff, on the judgment so obtained,  
and why execution should not issue thereon.

£      s.      d.

Due on judgment ... : :

To the Defendant.

[N.B.—Where the judgment in the original cause was for the defendant, the above form must be altered accordingly.]

### 138. (See p. 109.)

#### JUDGMENT ON SCIRE FACIAS ON CHANGE OF DEFENDANT.

Whereas the plaintiff at a court holden at \_\_\_\_\_ on  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, obtained a judgment against  
C.D. for the sum of £ \_\_\_\_\_ for \_\_\_\_\_ and costs, and  
which judgment now remains unsatisfied: and whereas the  
said C.D. has since died [or state other circumstances requiring  
revival of judgment], and the defendant is his executor [or state  
other representative character].

[Conclude according to the rules and forms as to executors  
and the defence made.]

£      s.      d.

Due on judgment ... : :

[N.B.—Where the judgment in the original cause was for the defendant, the above form must be altered accordingly.]

## 139. (See p. 250.)

## JUDGMENT AGAINST AN EXECUTOR WHO HAS WASTED ASSETS.

No. of Plaintiff.

In the County Court of                      holden at                      . (Seal.)  
 Between A.B., Plaintiff,  
 and  
 C.D., Executor [or Administrator] of  
 deceased, Defendant.

Order xxv.,  
 rule 4. Upon hearing this cause at a court this day holden, it is  
 adjudged that the plaintiff do recover against the defendant  
 the sum of £                      for                      and £                      for costs:  
 And it is ordered that the defendant do pay the same to the  
 registrar of this court on or before the                      day of  
 18 .

It is also adjudged that the defendant, being the executor  
 [or administrator] of the said deceased, has made away with,  
 wasted, and put to his own use divers goods and chattels [or  
*moneys as the case may be*], to the amount of the said sum,  
 which were the property of the said deceased, and which came  
 to the hands of the defendant as executor [or administrator]  
 as aforesaid, to be administered:

Wherefore it is ordered, that if the defendant shall make  
 default in the payment of the said sum, the same shall be  
 levied by distress and sale of the goods and chattels which  
 were of the said deceased, and which came to the hands of the  
 defendant as executor [or administrator] if the defendant has  
 so much thereof in his hands to be administered, and if he  
 has not, then that the said sums shall be levied of the proper  
 goods and chattels of the defendant.

## 140. (See p. 250.)

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHO ADMITS  
 HIS REPRESENTATIVE CHARACTER AND DENIES THE DEMAND.

Order xxv.  
 rule 5. Upon hearing this cause at a court this day holden, it is  
 adjudged that the plaintiff do recover against the defendant  
 the sum of £                      for                      and £                      for costs:  
 And it is ordered that the defendant do pay the same to the  
 registrar of this court on or before the                      day of  
 18 .

And the defendant having admitted his representative  
 character, but denied the plaintiff's demand, and the plaintiff  
 having proved the same, it is further ordered, that if the  
 defendant shall make default in payment of the said sums, the  
 same shall be levied as follows: The sum of £                      [*the*  
*debt or damage and costs*] of the goods and chattels which  
 were of the said deceased, and which came to the hands of  
 the defendant as executor [or administrator], if the defendant  
 has so much thereof in his hands to be administered; and if  
 he has not, then that the sum of £                      [*the costs*] be levied  
 upon the proper goods of the defendant.

## 141. (See p. 250.)

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION.

Upon hearing this cause at a court this day holden, it is Order xxv.  
adjudged that the plaintiff do recover against the defendant rule 6.  
the sum of £            for            and £            for costs :

And it is ordered, that the defendant do pay the same to  
the registrar of this court, on or before the            day of  
18 .

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or partial*] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has proved the administration alleged:

Wherefore it is ordered that in default of such payment the sum of £            being the costs incurred by the plaintiff in proving his demand, shall be levied on the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or administrator*], if the defendant has so much thereof in his hands, and if he has not, then that it shall be levied of the proper goods and chattels of the defendant, and as to the sum of £            the plaintiff's demand, that it be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered.

And it is further ordered, that the plaintiff do pay to the registrar of the court on or before the            day of  
18 , the sum of £            being the costs incurred by the defendant in proving the administration alleged.

[*N.B.—If the defendant is shown to have some assets, the judgment must be for that amount de bonis testatoris, and for the residue quando acciderint.*]

## 142. (See p. 250.)

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT DOES NOT PROVE THE ADMINISTRATION.

Upon hearing this cause at a court this day holden, it is Order xxv.  
adjudged that the plaintiff do recover against the defendant rule 7.  
the sum of £            for            .            and £            for  
costs :

And it is ordered, that the defendant do pay the same to

the registrar of this court on or before the                      day of  
18 .

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or partial*] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has not proved the administration alleged.

And it is further ordered, that if the defendant shall make default in payment of the said sum, the same shall be levied as follows: The sum of £                      [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the defendant as aforesaid, if the demand has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £                      [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered; and that the sum of £                      [*the costs*] be levied upon the proper goods of the defendant.

#### 143. (*See p. 250.*)

JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND PROVES THE ADMINISTRATION.

Order xxv., rule 8. Upon hearing this cause at a court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £                      for                      , and it is ordered that the defendant do pay the same to the registrar of this court on or before the                      day of                      18 .

And the defendant having admitted his representative character and also the plaintiff's demand, and having alleged a total [*or partial*] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the defendant has proved to the court the administration alleged:

Wherefore it is ordered that in default of such payment the said sum of £                      shall be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered.

And it is further ordered that the plaintiff do pay to the registrar of this court on or before the                      day of  
18 , the sum of £                      being the cost incurred by the defendant in proving the administration alleged.

144. (*See p. 251.*)

JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND DOES NOT PROVE THE ADMINISTRATION.

Upon hearing this cause at a court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £                      for                      Order xxv.,  
rule 9.

And it is ordered that the defendant do pay the same to the registrar of this court at                      on or before the day of                      18                      .

And the defendant having admitted his representative character, and also the plaintiff's demand, and having alleged a total [*or partial*] administration of the goods of the said deceased which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the defendant has not proved to the court the administration alleged.

And it is further ordered that if the defendant shall make default in payment of the said sum, the same shall be levied as follows: The sum of £                      [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the defendant as aforesaid, if the defendant has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £                      [*debt*] be levied of the goods and chattels of the said deceased, which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered; and that the sum of £                      [*the costs*] be levied upon the proper goods of the defendant.

145. (*See p. 251.*)

SUMMONS TO AN EXECUTOR OF PLAINTIFF'S INTENTION TO APPLY TO THE COURT WHERE ASSETS HAVE COME TO DEFENDANT'S HANDS SINCE JUDGMENT.

No. <sup>1</sup>/<sub>2</sub> of Plaintiff.

In the County Court of                      holden at  
(*Seal.*)

Between A.B., Plaintiff,  
(*Address.*)  
(*Description.*)  
and  
C.D., Executor [*or Administrator*]  
of deceased, Defendant.  
(*Address.*)  
(*Description.*)

The plaintiff having learnt that property of the deceased Order xxv.,  
has come to your (the defendant's) hands as executor [*or rule 10.*  
administrator] since the judgment herein to be administered  
[and that you have withholden and wasted the same], intends  
to apply to the court to be holden on the                      day of



187 , at the hour of                      in the                      noon, for an order that the debt [*or damages*] and costs shall be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered [and that if you have not, then that it shall be levied of your proper goods and chattels], and that the costs be levied of your proper goods and chattels.

You are therefore hereby summoned to appear at the said court at the time and place aforesaid, to answer touching the matters aforesaid.

To the Executor or Administrator of the Deceased.

#### 146. (*See p. 250.*)

##### WARRANT OF EXECUTION AGAINST THE GOODS OF A TESTATOR.

Whereas at a court holden at                      on the                      day of 187 , the plaintiff obtained a judgment against the defendant, as executor [*or administrator*] of the said deceased, for the sum of                      for                      due and owing to the plaintiff by the said deceased in his lifetime, and the sum of                      for costs of suit :

And thereupon it was ordered by the court, that the defendant should pay the same to the registrar of the court, on or before the                      day of                      18   [*or by instalments of                      for every                      days*] :

And whereas default has been made in payment according to the said order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said deceased in his lifetime, in the hands of the defendant to be administered, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said deceased in his lifetime, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, if the defendant hath so much thereof in his hands to be administered ; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, the sum of                      for the costs and charges first above mentioned, and the costs of this execution and of levying the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this \_\_\_\_\_ day  
of \_\_\_\_\_ 18 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                   | £   | s.  | d.  |
|-----------------------------------|-----|-----|-----|
| Debt or damages adjudged          | ... | ... | ... |
| Costs                             | ... | ... | ... |
| Paid into court                   | ... | ... | ... |
| Remaining due                     | ... | ... | ... |
| Poundage for issuing this warrant | ... | ... | ... |
| Total amount to be levied         | ... | ... | ... |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at 19 & 20 Vict.  
minutes past the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of the c. 108, s. 46.  
day of \_\_\_\_\_ 187 .

(Warrants of execution upon the judgments given in pages 626 to 629 may be drawn from this form, altered accordingly from those forms.)

#### 147. (See pp. 250, 251.)

##### JUDGMENT AGAINST AN EXECUTOR ON A DEVASTAVIT SINCE JUDGMENT.

Upon hearing the plaintiff's application in this cause at a court this day holden, it is adjudged that property of deceased has come to the hands of the defendant, as his executor [*or administrator*] since the judgment recovered herein, to be administered, and that the defendant has wasted the same property, whereby the judgment recovered herein remains unsatisfied. It is therefore ordered, that the defendant do pay the sum of £ \_\_\_\_\_ recovered by [*or remaining due upon*] the judgment, together with the sum of £ \_\_\_\_\_ the costs of this order, to the registrar of this court, on or before [*as the case may be*].

And it is further adjudged, that if the defendant make default in payment thereof as execution shall issue to make and levy the above-mentioned sums of the goods and chattels of the said deceased, if the defendant has so much thereof in his hands to be administered, and if he has not, then to be made and levied of the proper goods and chattels of the defendant.

#### 148. (See p. 170.)

##### ORDER OF REFERENCE.

By the consent of the plaintiff and defendant, it is ordered 9 & 10 Vict.  
that all matters in difference in this cause [*and all other matters* c. 95, s. 77.

within the jurisdiction of this court, in difference between the said parties] be referred to                      of                      whose award, to be made or given on or before the                      day of 18                      , shall be entered as the judgment in this cause; and it is further ordered, that the time for making or giving such award may be from time to time enlarged by the judge of the court, in his discretion, for such time as he shall, by indorsement to be by him made on this order, direct; and that the said award, when made or given, may be referred back again to the said arbitrator at the like discretion of the said judge without the further consent of the said parties, and in case either of the said parties shall neglect or refuse to attend any appointment to be made by the said arbitrator for proceeding under this order, after two days' notice thereof in writing shall have been given to him by serving the same personally or by leaving it at his last or usual place of abode, the said arbitrator shall be at liberty to proceed *ex parte* on the matters of the said reference, and his certificate shall be as valid as if both the said parties had duly attended before him. And it is further ordered, that the costs of the said reference shall be in the discretion of the arbitrator, and that the costs of the action shall abide the event; and it is lastly ordered, that the submission to arbitration shall not be revocable by either party.

## 149. (See p. 286.)

## SUMMONS TO A TENANT OR OTHER PERSON HOLDING OVER.

[Same heading as to an ordinary summons.]

19 & 20 Vict.  
c. 108, ss. 50,  
51.

(a) [Issued "by leave of the court," or "by leave of the registrar."]

You are hereby summoned to appear at a county court to be holden at                      on the                      day of 18                      , at the hour of                      in the                      noon, to answer the plaintiff, wherefore you neglect or refuse to deliver up to him possession of a certain [messuage, with appurtenances, or part of a house, &c., or, as the case may be] situate at

(a) Insert  
this when  
necessary.

And take notice, that the plaintiff claims of you for rent [or mesne profits] [or for rent and mesne profits] the sum of                      for a period from the                      day of 18                      , to the                      day of 18                      .

And further take notice, if you do not appear at the said court, and show cause why you do not deliver up possession as aforesaid, the judge of the said court may order that possession of the said premises be given by you to the plaintiff forthwith, or on or before such day as the judge shall name, and that if such order be made and be not obeyed a warrant may issue to give possession to the plaintiff.

Dated the                      day of                      18                      .

Registrar of the Court.

To the Defendant.

|                       |     |     |    |
|-----------------------|-----|-----|----|
|                       | £   | s.  | d. |
| Costs of this summons | ... | ... | :  |
| Claim for             | ... | ... | :  |

At bottom of summons.

**TAKE NOTICE.**—If the plaintiff in this action be not your immediate landlord, YOU MUST upon your being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE LANDLORD, and if you do NOT give such notice you will be liable, under section 53 of the County Courts Act, 1856, 19 & 20 Vict. c. 108, to forfeit to your immediate landlord THREE YEARS' RACKRENT of the premises held by you of him, in respect of which the summons shall have issued.

150. (*See p. 290.*)

SUMMONS FOR RECOVERY OF A TENEMENT.

You are hereby summoned to appear at a court to be holden 19 & 20 Vict.  
at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ c. 108, s. 52.  
at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, to answer the  
plaintiff why possession of a certain \_\_\_\_\_ situate at  
\_\_\_\_\_ should not be given up to the plaintiff, by reason  
of the rent payable in respect thereof by you, being half a year  
in arrear, and the plaintiff having right by law to re-enter for  
the non-payment thereof.

If you shall pay to the registrar the rent in arrear, and the costs of this action, as stated at the foot of the summons, five clear days before the day you are required to appear to this summons, this action will cease.

And take notice, that if you do not pay such rent in arrear and costs, or appear at the said court, and show cause why possession of the said \_\_\_\_\_ should not be recovered against you, you may be ordered by the court to give possession of such premises to the plaintiff, and that if such order be not obeyed a warrant may issue to give possession to the plaintiff.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
Registrar of this Court.  
£ s. d.

Costs of this summons ... : :

*At bottom of summons.*

**TAKE NOTICE.**—If the plaintiff in this action be not your immediate landlord YOU MUST, upon being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE LANDLORD, and if you do NOT give such NOTICE you will be liable, under section 53 of the County Courts Act, 1856, 19 & 20 Vict. c. 108, to forfeit to your immediate landlord THREE YEARS' RACKRENT of the premises held by you of him, in respect of which the summons shall have issued.

151. (*See pp. 288, 290.*)

ORDER FOR RECOVERY OF TENEMENT.

Upon the hearing of this cause, at a court holden this day, 19 & 20 Vict.  
it is ordered, that the defendant do give to the plaintiff pos- c. 108, ss.  
session of a certain house [or *messuage with appurtenances*, or 50—52.  
*part of certain house, or as the case may be*], situate at  
\_\_\_\_\_ forthwith [or on the \_\_\_\_\_ day of \_\_\_\_\_ ],

and it is adjudged that the plaintiff do recover against the defendant the sum of £                      for rent [*or mesne profits*] [*or for rent and mesne profits*] and £ costs.

And it is ordered, that the defendant do pay to the registrar of the court the sum [*or sums*] above mentioned on or before the                      day of                      18 .  
To the Defendant.

TAKE NOTICE.—That if you do not give such possession a warrant may issue requiring the bailiff of the court to give possession of the said                      to the plaintiff and to levy the sum above mentioned, together with further costs.

152. (See pp. 288, 290, 291.)

WARRANT FOR GIVING POSSESSION OF TENEMENT.

19 & 20 Vict.  
c. 108, ss.  
50—52.

Whereas at a court holden at                      on the                      day of                      18 , it was ordered by the court, that the defendant should give the plaintiff possession of a certain [*as in summons*] situate at                      [*and that the plaintiff should recover against the defendant*] the sum of £                      for rent [*or mesne profits*] [*or rent and mesne profits*] and costs :

And whereas the defendant has not obeyed the said order :  
These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned premises to the plaintiff :

And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the said sum, and the costs of this warrant and execution ; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this                      day of                      18 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court.

|                                                                                                          | £ | s. | d. |
|----------------------------------------------------------------------------------------------------------|---|----|----|
| Rent [ <i>or mesne profits</i> ] [ <i>or rent and mesne profits</i> ]    ...    ...    ...    ...    ... |   |    |    |
| Costs    ...    ...    ...    ...    ...    ...                                                          |   |    |    |
| Poundage for issuing this warrant    ...    ...                                                          |   |    |    |
| Total amount to be levied    ...    ...                                                                  |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant  
at                      minutes past the hour of                      in the noon of  
the                      day of                      18                      :

153. (See p. 276.)

SUMMONS IN ACTION OF EJECTMENT.

No. of Plaint.

In the County Court of                      holden at                      (Seal.)

Between *A.B., C.D., and E.F.*, Plaintiffs,  
[*Addresses, descriptions,*]  
and  
*G.H., I.J., and K.L.*, Defendants.  
[*Addresses, descriptions.*]

You the above-named defendants, and all persons entitled to defend the possession of the property described in the statement hereunto annexed, situated in the parish within the district of this court, to the possession whereof the above-named plaintiffs, some or one of them, claim to be [or to have been on and since the                      day of                      18                      ] entitled, and to eject all other persons therefrom, are hereby summoned to appear at a county court to be holden at                      on the                      day of                      18                      at the hour of                      in the forenoon, to defend the said property, or such part thereof as you may be advised.

And take notice that unless you appear judgment may be given, and you turned out of possession.

Dated the                      day of                      18                      .

Registrar of the Court.

To the Defendants.

£                      s.                      d.

Cost of this summons                      ...                      :                      :

*At bottom of summons.*

TAKE NOTICE.—If you the defendants, or any of you, be only tenants of the property or some part thereof, you must, upon being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE landlord or his bailiff or receiver, and if you do not give such notice you will be liable, under section 209 of 15 & 16 Vict. c. 76, to FORFEIT to your landlord THREE YEARS' RACKRENT of the premises demised to you or holden in your possession of him, in respect of which this summons has issued.

## 154. (See p. 278.)

## NOTICE OF WITHDRAWAL OF ACTION AS TO THE WHOLE OR PART OF PROPERTY.

Take notice that I the above-named plaintiff will not proceed in this action [*or in respect of that portion of the property hereinafter described; that is to say, here describe the said portion of property*].

Plaintiff.

## 155. (See p. 277.)

## NOTICE IN EJECTMENT THAT A PERSON NOT ORIGINALLY MADE A DEFENDANT WILL APPEAR AND DEFEND.

Take notice that *M.N.* has filed the affidavit, a copy of which is hereunto annexed, and that by leave of the registrar he will appear at the trial as a defendant.

To the Plaintiffs.

## 156. (See p. 277.)

## NOTICE IN EJECTMENT THAT A DEFENDANT WILL LIMIT HIS DEFENCE TO PART OF THE PROPERTY.

Take notice that the above-named defendant *K.L.* will at the trial of this action limit his defence to a part only of the property mentioned in the statement annexed to the summons: that is to say [*here describe the part to which the defence is limited with reasonable certainty*].

To the Registrar of the Court  
and to the Plaintiffs.

## 157. (See pp. 278, 279.)

## JUDGMENT IN EJECTMENT FOR ALL THE PLAINTIFFS FOR THE WHOLE PROPERTY.

(a) The day on which the summons issued or the day stated in the summons on which the title of plaintiffs accrued. Upon the hearing of this cause at a court holden this day it is adjudged that the plaintiffs were on the (a) day of 18 , and still are entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement*]; and it is ordered that the defendants do give the plaintiffs possession of the said above-mentioned property forthwith [*or on the day of* ] ; and it is adjudged that the plaintiffs do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above-mentioned on or before the day of 18 .

To the Defendants.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sum above mentioned, together with further costs.



## 158. (See p. 278.)

JUDGMENT IN EJECTMENT FOR ALL THE PLAINTIFFS FOR PART OF THE PROPERTY AGAINST ONE OF THE DEFENDANTS, AND FOR THE OTHER DEFENDANTS AS TO THE RESIDUE OF THE PROPERTY.

Upon the hearing of this cause at a court holden this day, it is adjudged that the plaintiffs were, on the                      day of                      18   , and still are entitled to the possession of part of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the part the plaintiffs are adjudged entitled to*], and for which part the defendant *G.H.* defended separately; but that the plaintiffs were not nor are entitled to the possession of the residue of the property described in the statement annexed to the summons, for which the defendants *I.J.* and *K.L.* defended; and it is ordered that the defendant *G.H.* do give the plaintiffs possession of the said part of the said property, for which the said *G.H.* defended separately, forthwith [*or on the day of*                      18   ]; and it is adjudged that the plaintiffs do recover against the defendant *G.H.* the sum of £                      for costs, and that the defendants *I.J.* and *K.L.* do recover against the plaintiffs the sum of £                      for costs.

And it is ordered that the defendant *G.H.* do pay the said sum of £                     , and the plaintiffs the said sum of £                      to the registrar of this court, on or before the                      day of                      18   .

To the Defendant *G.H.* and to the Plaintiffs.

Take notice that unless possession be given and payment made as above ordered a warrant or warrants may issue, requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sums above-mentioned from the parties ordered to pay the same respectively, together with further costs.

## 159. (See p. 279.)

JUDGMENT IN EJECTMENT FOR ONE OF THE PLAINTIFFS FOR ALL THE PROPERTY AGAINST ALL THE DEFENDANTS.

Upon the hearing of this cause at a court holden this day, it is adjudged that the Plaintiff *A.B.* was on the                      day of                      18   , and still is, entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement annexed to the summons*]; and it is ordered that the defendants do give the said plaintiff *A.B.* possession of the said above-mentioned property forthwith [*or on the*                      day of                      ], and it is adjudged that the said plaintiff *A.B.* do recover against the defendants the sum of £                      for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the                      day of                      18   .

To the Defendants.

Take notice that unless possession be given and payment made as above ordered a warrant may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff A.B., and to levy the sum above mentioned, together with further costs.

### 160. (See p. 279.)

#### JUDGMENT IN EJECTMENT FOR PLAINTIFF, WHOSE TITLE HAS EXPIRED BEFORE TRIAL.

Upon the hearing of this cause at a court holden this day, it is adjudged that the plaintiff was on the                      day of                      18                      , and thence until and at the time of the entry of the plaint and of the service of the summons in this action, entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*here describe the property as set out in the statement*], but his title to the same has since that time and before this day expired; and it is further adjudged that the plaintiff do recover against the defendant the sum of £                      for costs.

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the                      day of                      18                      .

### 161. (See p. 279.)

#### JUDGMENT IN EJECTMENT FOR DEFENDANT.

Upon the hearing of this cause at a court holden this day, it is adjudged that the plaintiff was not on the                      day of                      18                      , nor thence hitherto hath been nor is he now entitled to the possession of the property, or of any part of the property mentioned in the statement annexed to the summons in this action; that is to say [*here describe the property as set out in the statement*]; and it is further adjudged that judgment be entered for the defendant [*or that judgment of nonsuit be entered*], and that the defendant do recover against the plaintiff the sum of £                      for costs.

And it is ordered that the plaintiff do pay the same to the registrar of this court on or before the                      day of                      18                      .

To the Plaintiff.

### 162. (See p. 279.)

#### JUDGMENT IN EJECTMENT FOR DEFENDANT'S COSTS WHERE PLAINTIFF DOES NOT APPEAR.

Whereas the plaintiff has not appeared, either by himself, his solicitor or agent, at the court holden this day, being the day appointed for the trial of this cause, and the defendant has appeared in person [*or by his solicitor or agent*], it is therefore adjudged that the cause be struck out, and that the

defendant do recover from the plaintiff the sum of £  
for costs.

And it is ordered that the plaintiff do pay the same to the  
registrar of this court on or before the                      day of  
18                      .

To the Plaintiff.

### 163. (See p. 279.)

#### HEADING AND CONCLUSION FOR SPECIAL CASE IN EJECTMENT.

No. of Plaintiff.

In the County Court of                      holden at  
(Seal.)

Between A.B., Plaintiff,  
and  
C.D., Defendant.

Whereas an action of ejectment was commenced by the  
plaintiff against the defendant, and is still pending in this  
court, for the recovery of [*here describe the property sought to  
be recovered as set out in the statement annexed to the  
summons*], and the parties have agreed upon the facts; now,  
by leave of the registrar, they state for the opinion of the  
court the following

#### Case.

[*Here set out the facts, and any deeds or documents, or so  
much thereof as may be material, numbering each paragraph of  
the case as in an affidavit, and conclude thus :*]

If the court shall be of opinion that the plaintiff is entitled  
to recover the whole or part of the property, then judgment  
shall be given accordingly for the plaintiff, with costs, but if  
the court shall be of a contrary opinion, then judgment shall  
be entered for the defendant, or judgment of nonsuit shall be  
given, with costs, as to the court shall seem fit.

A.B., Plaintiff,

or

E.F., Plaintiff's Solicitor.

C.D., Defendant,

or

G.H., Defendant's Solicitor.

### 164. (See p. 279.)

#### WARRANT OF EXECUTION IN EJECTMENT FOR POSSESSION AND COSTS.

Whereas at a court holden at                      on the                      day  
of                      18                      it was adjudged that the plaintiffs were on  
the                      day of                      18                      and still are entitled to the possession  
of the property mentioned in the statement annexed to the  
summons in this action; that is to say [*describe the property as  
set out in the statement*]; and it was ordered that the de-  
fendants should give the plaintiffs possession of the said above-  
mentioned property forthwith [*or on the                      day of*  
] and it was adjudged that the plaintiffs should

recover against the defendants the sum of £                      for costs; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [or on the day of                      ]:

And whereas the defendants have not obeyed the said order: these are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned property to the plaintiff: And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the said sum and the costs of this warrant and execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

To the High Bailiff of  
the said Court.

165. (See p. 279.)

SPECIAL WARRANT OF EXECUTION IN EJECTMENT FOR POSSESSION  
AND COSTS WHERE ONE OF SEVERAL PLAINTIFFS HAS DIED  
AFTER JUDGMENT AND BEFORE EXECUTION EXECUTED.

Whereas at a court holden at                      on the                      day of                      18                      , it was adjudged that the plaintiffs were on the                      day of                      18                      and still are entitled to the possession of [*describe the property as in the statement annexed to the summons*], mentioned in the statement annexed to the summons in this action; and it was ordered that the defendants should give the plaintiffs possession of the same forthwith [or as in the judgment]; and it was adjudged that the plaintiffs should recover against the defendants the sum of £                      for costs; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [or as in the judgment]:

And whereas the defendants have not obeyed the said order:

And whereas *C.D.*, one of the plaintiffs, has died since judgment was given and before execution executed:

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned premises to the surviving plaintiffs *A.B.* and *E.F.* on behalf of themselves and of the legal representatives of the deceased plaintiff *C.D.* And these are therefore further, &c. [*conclude as in No.                      of the forms in the schedule*].

## 166. (See p. 279.)

## JUDGMENT IN EJECTMENT FOR PLAINTIFF WHERE DEFENDANT IS JOINT TENANT, TENANT IN COMMON, OR COPARCENER WITH PLAINTIFF, AND AN ACTUAL OUSTER IS PROVED.

Upon the hearing of this cause at a court holden this day, it is adjudged that the plaintiff and defendant were on the day of 18 and still are entitled to the joint possession of the property mentioned in the statement annexed to the summons in this action as joint tenants [or as tenants in common or as coparceners]; that is to say [*describe the property as set out in the statement*], and it having been proved to the satisfaction of the court that the defendant did before the commencement of this action actually oust the plaintiff from the possession of the said property, and thence hitherto hath kept and still keeps the plaintiff ousted therefrom, it is adjudged and ordered that judgment be entered for the plaintiff, and that the defendant do give the plaintiff jointly with him the defendant possession of the said above-mentioned property forthwith [or on the day of ], and that the plaintiff do recover against the defendant the sum of £ for costs.

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 18 .

To the Defendant.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sum above mentioned with further costs.

## 167. (See p. 279.)

## JUDGMENT IN EJECTMENT FOR DEFENDANT WHERE DEFENDANT IS JOINT TENANT, TENANT IN COMMON, OR COPARCENER WITH THE PLAINTIFF, AND NO ACTUAL OUSTER IS PROVED.

Upon the hearing of this cause at a court holden this day, it is adjudged that the plaintiff and the defendant were on the day of 18 and still are entitled as joint tenants [or as tenants in common or as coparceners] to the joint possession of; that is to say [*describe the property as set out in the statement*], mentioned in the statement annexed to the summons in this action; and it not having been proved to the satisfaction of the court that the defendant has actually ousted the plaintiff from the possession of the said property or of any part thereof, it is adjudged and ordered that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay to the registrar of this court the sum above mentioned on or before the day of 18 .

To the Plaintiff.

168. (*See p. 279.*)

ORDER IN EJECTMENT FOR THE SUBSTITUTION OF THE HEIR OR OTHER REPRESENTATIVE OF A SOLE PLAINTIFF WHO DIES BEFORE THE RETURN-DAY FOR SUCH DECEASED PLAINTIFF, AND FOR THE CONTINUATION OF THE ACTION IN THE NAME OF THE HEIR OR OTHER REPRESENTATIVE.

Upon reading the affidavit of *E.F.*, and upon hearing the attorneys of the said *E.F.* and of the defendant, and it appearing to the court that the plaintiff *A.B.* died on the                      day of                      now last past, and since the commencement of this action, and that the said *E.F.* is the heir-at-law of the said *A.B.*, and as such heir entitled to whatever estate or interest the said *A.B.* had in the property sought to be recovered in this action [*or that the said E.F. is entitled as devisee under the will of the said A.B. to whatever estate or interest the said A.B. had in the property sought to be recovered in this action, or as the case may be*], it is ordered that the name of the said *E.F.* as heir-at-law [*or as devisee under the will, or as the case may be*] of *A.B.* deceased be substituted in the proceedings in this action for the name of the said *A.B.* deceased as plaintiff in this action, and that the said *E.F.* be at liberty to continue this action in his own name as plaintiff, and to proceed therein as if he had been originally the plaintiff therein, and that the said *E.F.* do pay to the registrar of this court, on or before the                      day of                      18                      , the sum of £                      for the costs occasioned to the defendant by this application, and that the trial of this action be forthwith proceeded with [*or be adjourned to the                      day of                      18* ].

To the Defendant.

N.B.—In explanation of this form it may be mentioned that after the amendment the title of the cause will stand thus:—

Between *E.F.* (the heir-at-law of *A.B.*,  
the original plaintiff, deceased)                      ...                      Plaintiff,  
and  
*C.D.*                      ...                      ...                      ...                      Defendant.

*Or,*  
Between *E.F.* (devisee under the will of  
*A.B.*, the original plaintiff, deceased)                      Plaintiff,  
and  
*C.D.*                      ...                      ...                      ...                      Defendant.

169. (*See p. 279.*)

ORDER OF EJECTMENT FOR THE SUBSTITUTION OF THE HEIR OR OTHER REPRESENTATIVE OF ONE OF SEVERAL PLAINTIFFS WHO DIES BEFORE THE RETURN-DAY FOR SUCH DECEASED PLAINTIFF, AND FOR THE CONTINUATION OF THE ACTION IN THE NAMES OF THE SURVIVING PLAINTIFF AND OF THE HEIR OR OTHER REPRESENTATIVE OF THE DECEASED PLAINTIFF.

Upon reading the affidavit of *K.L.*, and upon hearing the attorneys of the said *K.L.* and of the defendants, and it appearing to the court that the plaintiff *C.D.* died on the

day of                      now last past, and since the commencement of this action, and that the said *K.L.* is the heir-at-law [or as the case may be] of the said *C.D.*, and as such heir [or as the case may be] is entitled to whatever estate or interest the said *C.D.* had in the property sought to be recovered in this action; it is ordered that the name of the said *K.L.* as heir-at-law [or as the case may be] of *C.D.* deceased be substituted in the proceedings in this action for the name of the said *C.D.* deceased as one of the plaintiffs, and that the action be continued and proceeded with in the names of *A.B.* and *K.L.* as plaintiffs as if the said *A.B.* and *K.L.* had been originally the plaintiffs therein, and that the said *K.L.* do pay to the registrar of this court on or before the                      day of                      18     , the sum of £                      for the costs occasioned to the defendants by this application, and that the trial of this action be forthwith proceeded with [or be adjourned to the                      day of                      18     ].  
To the Defendants.

## 170. (See p. 279.)

## JUDGMENT IN EJECTMENT FOR SUBSTITUTED PLAINTIFF.

No. of Plaintiff.

In the County Court of                      holden at                      (Seal.)

Between *E.F.*, the heir-at-law of *A.B.*  
[the original plaintiff] deceased     ...     Plaintiff,  
and  
*C.D.*     ...     ...     ...     Defendant.  
Or,  
[Between *E.F.*, devisee under the will of  
*A.B.*, the original plaintiff, deceased...     Plaintiff,  
and  
*C.D.*     ...     ...     ...     Defendant.]

Whereas the plaintiff *A.B.* died after the commencement of this action, and before the return-day of the summons therein, and by an order of the court made this day [or on the day of                      last], it was ordered, amongst other things, that the name of the said *E.F.*, as heir-at-law of *A.B.* deceased, should be substituted in the proceedings in this action for the name of the said *A.B.* deceased as plaintiff, and that the action should be continued in the name of the said *E.F.* as plaintiff as aforesaid :

Now, upon the hearing thereof at a court holden this day, it is adjudged, that the said *A.B.* on the                      day of 18     , and thence until the day of his death, was entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [describe the property as set out in the statement]; and that the said plaintiff *E.F.* is the heir-at-law of the said *A.B.*, and as such heir became on the death of the said *A.B.* and still is entitled to the possession of the said above-mentioned property; and it is ordered that the defendant do give the plaintiff *E.F.* possession of the said above-mentioned property, forthwith [or on



the            day of            18    ], and it is adjudged that the plaintiff *E.F.* do recover against the defendant the sum of £            for costs :

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of            18    .

Given under the seal of the Court this            day of 18    .

By the Court,

Registrar of the Court.

To the Defendant.

Take notice that if possession be not given and payment made as above ordered a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sum above mentioned, together with further costs.

[*N.B.*—If *E.F.* be entitled as devisee under the will of *A.B.*, the original plaintiff, or if *A.B.* be one of several joint plaintiffs, the above form must be altered accordingly.]

#### 171. (See p. 279.)

#### JUDGMENT IN EJECTMENT FOR SURVIVING AND SUBSTITUTED PLAINTIFFS.

|                                                                                                                      |                   |
|----------------------------------------------------------------------------------------------------------------------|-------------------|
|                                                                                                                      | No. of Plaintiff. |
| In the County Court of                                                                                               | holden at         |
| (Seal.)                                                                                                              |                   |
| Between <i>A.B.</i> and <i>K.L.</i> , the heir-at-law of<br><i>C.D.</i> (one of the original plaintiffs)<br>deceased | }                 |
|                                                                                                                      | Plaintiffs,       |
| and                                                                                                                  |                   |
| <i>E.F.</i> and <i>G.H.</i> ...    ...    ...                                                                        | } Defendants.     |

Whereas one of the plaintiffs, *C.D.*, died after the commencement of this action and before the return-day of the summons therein, and by an order of this court made this day [or on the            day of            last] it was ordered (amongst other things) that the name of the said "*K.L.*, as heir-at-law of *C.D.* deceased" should be substituted in the proceedings in this action for the name of the said *C.D.* deceased, together with the name of the said *A.B.* as plaintiffs, and that the action should be continued in the names of the said *A.B.* and *K.L.* as plaintiffs as aforesaid :

Now, upon the hearing thereof at a court this day holden, it is adjudged that the said *A.B.* and *C.D.* deceased, were on the            day of            18    , and thence until the day of the death of the said *C.D.*, entitled to the possession of [describe the property as in the statement annexed to the summons], mentioned in the statement annexed to the summons in this action; and that the plaintiff, *K.L.*, is heir-at-law of the said *C.D.* deceased, and that on the death of the said *C.D.*, the said *A.B.* and *K.L.* became and still are entitled to the possession of the property in the said statement mentioned; and it is ordered that the defendants do give the plaintiffs

A.B. and K.L. possession of the property above mentioned and described forthwith [or on the                      day of 18    ]; and it is adjudged that the plaintiffs A.B. and K.L. do recover against the defendants the sum of £                      for costs :

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the                      day of                      18 .

Given under the seal of the Court this                      day of 18 .

By the Court,

Registrar of the Court.

To the Defendants.

[If K.L. be entitled as devisee under the will of C.D., one of the original plaintiffs, this form must be altered accordingly.]

# 172. (See p. 279.)

ORDER IN EJECTMENT, GIVING LEAVE TO A PARTY CLAIMING THE PROPERTY ON THE DEATH OF DEFENDANT, WHO DIES BEFORE THE RETURN-DAY, TO APPEAR AND DEFEND IN THE PLACE OF SUCH DECEASED DEFENDANT.

Upon reading the affidavit of E.F., and upon hearing the attorneys of the said E.F., and of the plaintiff, and it appearing to the court that the defendant has died since the commencement of the action, and that upon the death of the defendant the said E.F. became entitled to whatever estate or interest the defendant C.D. had in the property sought to be recovered in this action ; it is ordered that the said E.F. be at liberty to appear and defend the said property above mentioned and described in the place of the said C.D. deceased, and that the name of E.F. be substituted for that of the said C.D. deceased, as defendant in the proceedings in this action, and that this action be continued as if the said E.F. had been originally made defendant therein ; and that the said E.F. do pay to the registrar of this court on or before the                      day of 18    the sum of £                      for the costs occasioned to plaintiff by this application, and that the trial of this action be forthwith proceeded with [or be adjourned to the                      day of                      18    ].

To the Plaintiff.

[N.B.—In explanation of this form it may be mentioned that after the amendment the title of the cause will stand thus :—

Between A.B., Plaintiff,  
and

E.F. (substituted for C.D., deceased), Defendant,  
and all subsequent proceedings will be against E.F. as if he had been originally defendant.]

## 173. (See p. 279.)

SUMMONS IN EJECTMENT IN THE NATURE OF A SCIRE FACIAS  
FOR COSTS AGAINST THE REPRESENTATIVES OF A DECEASED  
DEFENDANT.

No. of Plaintiff.

In the County Court of                      holden at                      (Seal.)

Between A.B., Plaintiff,  
[Address, description,]  
and  
C.D., Defendant.  
[Address, description.]

Whereas the plaintiff at a court holden at                      on  
the                      day of                      18                      , obtained a judgment against  
C.D., of                      for the recovery of the possession of [*here  
describe the property as in the judgment*], and for the sum of  
£                      for costs, which judgment remains unsatisfied so  
far as relates to the said costs; and whereas the said C.D.  
has since died, and you are his executor [*or state other re-  
presentative character*], you are hereby summoned to appear at  
a court to be holden at                      on the                      day of  
18                      , at                      o'clock in the                      noon, to show cause  
why judgment should not be entered up against you at the  
suit of the plaintiff on the judgment so obtained for the said  
sum of                      for costs, and why execution should not issue  
thereon for the same.

To the Defendant.

£                      s.                      d.

Due on judgment for costs                      ...

[N.B.—*Judgments can easily be framed from the ordinary  
form of judgment on scire facias summons.*]

## 174. (See p. 279.)

JUDGMENT IN EJECTMENT FOR PLAINTIFF WHO HAS WITHDRAWN  
THE ACTION AS TO PART OF THE PROPERTY.

Whereas the plaintiff has withdrawn this action as to part  
of the property mentioned in the statement annexed to the  
summons in this action; that is to say [*describe the part of the  
property as set out in plaintiff's notice*], and the action has  
proceeded for the recovery of the remainder of the said  
property; now upon the hearing thereof this day it is adjudged  
that the plaintiff was on the                      day of                      18                      , and  
still is entitled to the possession of the remainder of the  
property mentioned in the statement annexed to the summons  
in this action; that is to say [*describe the remainder of the  
property*]; and it is ordered that the defendant do give the  
plaintiff possession of the said lastly above-mentioned property  
forthwith [*or on the                      day of* ]; and it is adjudged  
that the plaintiff do recover against the defendant the sum of  
£                      for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 18 .  
To the Defendant.

[*N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, this form must be altered accordingly.*]

### 175. (See p. 278.)

#### CONFESSION IN EJECTMENT BY DEFENDANT OF PLAINTIFF'S TITLE TO THE PROPERTY.

No. of Plaint.

In the County Court of . holden at .  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

I, the above-named defendant, hereby confess and admit the plaintiff's title to the property mentioned in the statement annexed to the summons in this action, and sought to be recovered therein, and that the plaintiff is entitled to the immediate possession thereof.

Dated this . day of 18 .  
Defendant.

Signed by the Defendant in the presence of .  
To the Registrar of the Court.

### 176. (See p. 278.)

#### CONFESSION IN EJECTMENT BY DEFENDANT DEFENDING SEPA- RATELY FOR PART OF THE PROPERTY OF PLAINTIFF'S TITLE TO SUCH PART.

No. of Plaint.

In the County Court of . holden at .  
Between A.B., Plaintiff,  
and  
C.D. and E.F., Defendants.

I, C.D., one of the above-named defendants, defending separately for [*here describe the part for which C.D. defends*], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, do hereby confess and admit the plaintiff's title to the above-mentioned part of the said property, and that he is entitled to the immediate possession thereof.

Dated this . day of 18 .  
C.D., one of the Defendants.

Signed by C.D., one of the Defendants, in the presence of .  
To the Registrar of the Court.

## 177. (See p. 279.)

JUDGMENT IN EJECTMENT FOR PLAINTIFF WHERE A DEFENDANT, DEFENDING SEPARATELY FOR PART OF THE PROPERTY, ADMITS PLAINTIFF'S TITLE TO SUCH PART, AND THE ACTION PROCEEDS FOR THE RECOVERY OF THE REMAINDER OF THE PROPERTY.

Whereas C.D., one of the defendants defending separately for [*here describe the part for which C.D. defends*], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, hath confessed and admitted the plaintiff's title to the said part of the said property, and that the plaintiff is entitled to the possession thereof; and whereas the action has proceeded for the recovery of the remainder of the said property: now, upon the hearing thereof at a court holden this day it is adjudged that the plaintiff was on the                      day of 18,                      and still is entitled to the possession of the remainder of the property mentioned in the statement annexed to the summons in this action; and it is ordered that the defendant C.D. do give the plaintiff possession of the said [*describe the part defended by C.D.*] forthwith [*or on the*                      day of 18                      ]; and that the defendant E.F. do give the plaintiff possession of the said [*the remainder of the property*] forthwith [*or on the*                      day of 18                      ]; and it is adjudged that the plaintiff do recover against the defendant C.D. the sum of £                      for costs, and against the defendant E.F. the sum of £                      for costs.

And it is ordered that the defendants do respectively pay the said sums above mentioned to the registrar of this court on or before the                      day of 18 .

To the Defendants.

Take notice, that unless possession be given and payment made as above ordered a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sums above mentioned, together with further costs.

[N.B.—*If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, the above form must be altered accordingly.*]

## 178. (See p. 278.)

NOTICE IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR THAT DEFENDANT HAS PAID INTO COURT A SUM OF MONEY FOR PRINCIPAL, INTEREST, AND COSTS.

Take notice, that the defendant has paid into court the sum of £                      as being all that is due for principal and interest upon the mortgage upon which this action is brought, and for costs; and further take notice, that if you are willing to accept the said sum so paid into court you need not appear on the return-day of the summons: but if you do not agree to accept the said sum so paid in as aforesaid, you should appear

at the court on that day, as the court will then proceed to determine whether the said sum of £            so paid into court as aforesaid is sufficient to satisfy all such principal, interest, and costs and fees as aforesaid, and will in either case make such order in the matter as to the court shall seem fit.

Dated this            day of            18   .  
Registrar of the Court.

To the Plaintiff.

179. (*See p. 278.*)

ORDER IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR  
(ALL MONEY DUE FOR PRINCIPAL, INTEREST, AND COSTS  
HAVING BEEN PAID INTO COURT) UPON PLAINTIFF TO RE-  
CONVEY TO THE DEFENDANT THE MORTGAGED PROPERTY.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £        for principal, interest, and costs due upon or in respect of the said mortgage: now upon the hearing thereof at a court this day holden, the plaintiff not appearing [*or the plaintiff agreeing to accept the said sum of £        for such principal, interest, and costs, as aforesaid, or the plaintiff, alleging that the said sum of £        is not sufficient to satisfy such principal, interest, and costs, as aforesaid, it is adjudged that the said sum is sufficient to satisfy such principal, interest, and costs as aforesaid, and*] it is ordered that within        days from this day the plaintiff shall, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and shall deliver up to the defendant all title deeds and writings relating to the said property.

To the Plaintiff and to the Defendant.

180. (*See p. 278.*)

ORDER IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR (A CERTAIN SUM HAVING BEEN PAID INTO COURT FOR PRINCIPAL, INTEREST, AND COSTS), THAT DEFENDANT SHALL PAY A FURTHER SUM INTO COURT, AND THAT UPON SUCH PAYMENT BEING MADE THE PLAINTIFF SHALL RECONVEY THE MORTGAGED PROPERTY TO THE DEFENDANT.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £        for principal, interest, and costs due upon or in respect of the said mortgage: now, upon the hearing thereof at a court this day holden, the plaintiff refusing to accept the said sum so paid into court as aforesaid, it is adjudged that the said sum of £        is not sufficient to satisfy the principal, interest, and costs due upon or in respect of the said mortgage, and that the further sum of £        is due from the defendant to the plaintiff for the same; and it is ordered that the defendant shall on or before the        day of        18   pay

to the registrar of this court the said last-mentioned sum, together with £                      for the plaintiff's costs in this action, and that upon the said sums of £                      and £                      amounting together to the sum of £                      , being paid into court on or before the said                      day of                      18                      , the plaintiff shall, within                      days from the said last-mentioned day, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and deliver up to him all title deeds and writings relating thereto; and it is further ordered, that if the defendant shall not, before or on the said                      day of                      18                      , pay the said last-mentioned sum, then execution shall forthwith issue on the application of the plaintiff for the recovery of the possession of the property described in the summons in this action, and for the sum of £                      [*the costs of this action*], together with the costs of the execution; and the registrar shall return the money paid into court to the defendant.

To the Plaintiff and to the Defendant.

# 181. (See p. 284.)

## PARTICULARS OR STATEMENT OF THE CAUSE OF ACTION UNDER SECTION 12 OF 30 & 31 VICT. C. 141.

This action is brought,—

Interrup-  
tion of right  
of way.

A. For that the plaintiff was possessed of a cottage, and by reason thereof was entitled to a right of way from and to the said cottage, over and through a certain inclosed yard of the defendant, to a certain spring of water, for the purpose of getting water from the said spring, and that the defendant hath prevented the plaintiff from using the said way and having thereby access to the said spring, and still hinders and prevents him therefrom; and neither the annual value nor the yearly rent of the lands, tenements, or hereditaments in respect of which or on, through, or over which such easement is claimed exceeds the sum of £20; and the plaintiff claims £20 damages.

Interrup-  
tion of  
drainage.

B. For that the plaintiff was possessed of a cottage and premises, and by reason thereof was entitled to have all the sewage and waste water arising on and from the said cottage and premises flow along and through a drain through and under the surface of a garden in the occupation of defendant into a cesspool there, and the defendant, by stopping up the said drain, hath prevented and still prevents such sewage and waste water from flowing through and along the said drain into the said cesspool; and neither, &c. [*as in the last form*], and the plaintiff claims 5s. damages.

Obstruction  
of light and  
air.

C. For that the plaintiff was possessed of a house in which there were divers windows, and by reason thereof was entitled to the free access of air and light into the said house through the said windows, and the defendant, by building a wall close to and in front of the said windows, hath darkened the plaintiff's house, and prevented and still prevents the access of light and air into the plaintiff's house as plaintiff before



enjoyed the same; and neither the annual value nor yearly rent of either plaintiff's house, or of the land on which the defendant has built the said wall, exceeds the sum of £20; and the plaintiff claims 40s. damages.

[The above forms are given merely as examples, and the statement in all cases must be in accordance with the right claimed, and be as concise as possible.]

182. (See p. 271.)

NOTICE TO DISTRAINER OF GOODS [OR CATTLE] INTENDED TO  
BE REPLEVIED.

In the County Court of                      holden at

Take notice, that A.B., of, &c., whose goods [or cattle] you have distrained, intends to replevy the same, and has proposed as his sureties for the due prosecution of an action of replevin against you in the [*here mention the court in which the action is to be brought*], E.F., of, &c., and G.H., of, &c., and that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at [*here insert place of office of registrar*], on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at the hour of \_\_\_\_\_ when the bond will be submitted to me for approval.

J.K.,  
Registrar of the Court.

183. (See pp. 218, 270, 271.)

BOND IN REPLEVIN WHERE ACTION TO BE COMMENCED IN  
HIGH COURT.

Know all men by these presents, that we, *A.B.*, of, &c., *C.D.*, 19 & 20 Vict. of, &c., and *E.F.*, of, &c., are held and firmly bound unto *c. 10s. s. 65.* *G.H. (a)*, of, &c., in £ to be paid to the said *G.H.* or *(a) The dis-* his certain attorney, executors, administrators, or assigns, for trainer. which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this                      day of  
one thousand eight hundred and                      .

Whereas the above-named C.D. and E.F., at the request of the said A.B., have agreed to enter into the above-written obligation, and his security has been approved of by \_\_\_\_\_, the registrar of the county court of \_\_\_\_\_ holden at \_\_\_\_\_, as appears by his allowance in the margin hereof:

I approve of this bond.  
I.K.,  
Registrar.  
(L.S.)  
This bond does not require a

Now the condition of this obligation is such, that if the above-bounden A.B. do and shall within one week from the date of the said obligation commence an action of replevin against the above-named G.H. in Her Majesty's High Court of Justice, for taking and unjustly detaining of certain goods and chattels of the said to wit [here

*insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and unless judgment be obtained thereon by default, do and shall prove before the said court of                      that he the said had good ground for believing that the title to the hereditament in respect of which the distress was made was in question [*or, that the title to a toll was in question*] [*or, that the title to a market was in question*] [*or, that the title to a fair was in question*] [*or, that the title to a franchise was in question*] [*or, that the alleged rent or damage in respect of which the distress was made exceeded twenty pounds*], and do and shall also make return of the said goods and chattels, if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A.B. (L.S.)

C.D. (L.S.)

E.F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

19 & 20 Vict. NOTE.—*If a deposit of money be made, the memorandum*  
c. 108, s. 71. *thereof should follow the terms of the conditions of the bond, and will not require a stamp.*

#### 184. (See pp. 218, 270, 271.)

#### BOND IN REPLEVIN WHERE ACTION TO BE COMMENCED IN COUNTY COURT.

19 & 20 Vict. Know all men by these presents, that we, A.B., of, &c., C.D.,  
c. 108, s. 66. of, &c., and E.F., of, &c., are held and firmly bound unto  
(a) The dis- G.H. (a), of, &c., in £                      to be paid to the said G.H.,  
trainer. or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this                      day of  
one thousand eight hundred and                      .

I approve Whereas the above-named C.D. and E.F., at the request of  
of this bond. the said A.B., have agreed to enter into the above-written  
I.K., obligation, and this security has been approved of by  
Registrar. , the registrar of the county court of

(L.S.)

*This bond does not require a stamp. See 5 Geo. 4, c. 41.*

holden at                      , as appears by his allowance in the margin hereof :

Now the condition of this obligation is such, that if the above-bounden A.B. do and shall within one month from the date of the said obligation commence an action of replevin against the above-named G.H. in the county court of holden at                      for taking and unjustly detaining of certain goods and chattels of the said to wit                      [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and do and shall also make return of the said goods and chattels, if return thereof shall be awarded, then this

obligation shall be void and of no effect, otherwise shall be and remain in full force.

|        |          |
|--------|----------|
| $A.B.$ | $(L.S.)$ |
| $C.D.$ | $(L.S.)$ |
| $E.F.$ | $(L.S.)$ |

Signed, sealed, and delivered by the above-bounden  
in the presence of

NOTE.—If a deposit of money be made, the memorandum 19 & 20 Vict. thereof should follow the terms of the conditions of the bond, and c. 103, s. 71. will not require a stamp.

185. (See p. 271.)

WARRANT TO HIGH BAILIFF TO REPLEVY.

In the County Court of \_\_\_\_\_ )  
holden at \_\_\_\_\_ )

Whereas                                         bath given security as well to 19 & 20 Vict.  
commence his action of replevin against                                         c. 108, s. 63.  
for the taking and unjustly detaining of certain goods and  
chattels [*or* cattle] of the said                                         that is to  
say :

and prosecute such action with effect and without delay, as also to return the said goods and chattels if return thereof shall be adjudged by law: now, as registrar of the said county court, and by virtue of the provisions of the 19 & 20 Vict. c. 108, I hereby authorise and direct you without delay to replevy and deliver the said goods and chattels [or cattle] to the said \_\_\_\_\_ and forthwith to return to me this warrant and what you shall have done under the same.

Dated the                      day of                      18   .

Registrar of the Court.

To the High Bailiff of the Court.

In obedience to this warrant, I have replevied and caused to be delivered to the within-named \_\_\_\_\_ the within-mentioned goods and chattels [or cattle].

Dated this                      day of                      18   .

High Bailiff.

(For JUDGMENT FOR PLAINTIFF IN REPLEVIN, *see* Form 24.)

186. (See p. 273.)

## JUDGMENT FOR DEFENDANT IN REPLEVIN FOR RENT.

Upon hearing this cause at a court holden this day, it is adjudged that the plaintiff do return to the defendant the goods and chattels, [or cattle, *stating the particulars thereof*], and pay to the registrar of the court, forthwith [or on the day of ], the sum of £ for costs of suit [or, it is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is £ and that the goods and chattels [or cattle] were of the value

of £                      and that the plaintiff do forthwith [or on the  
                                  day of                      ] pay to the registrar of the court,  
 at his office, the said sum of £                      and also the sum of  
 £                      for costs of suit.

## 187. (See p. 273.)

JUDGMENT FOR DEFENDANT IN REPLEVIN OF CATTLE DAMAGE-  
FEASANT.

Upon hearing this cause at a court holden this day, it is adjudged that the plaintiff do return to the defendant the cattle [here specify the cattle], or do pay to the registrar of this court, forthwith [or on the                      day of                      18                      ], the sum of £                      , which is now adjudged to be the amount of damage sustained by the defendant.

It is also adjudged that the plaintiff do pay to the registrar of the court, on the day and year aforesaid, the sum of £                      for costs.

## 188. (See p. 187.)

## JUDGMENT IN DETINUE.

Upon hearing this cause at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £                      , the same being now this day assessed by this court to be the value of the following chattels of the plaintiff wrongfully detained by the defendant; that is to say [here enumerate the chattels which the court decides to have been detained], and the further sum of £                      for damages for the detention of the said chattels, and the sum of £                      for costs.

And it is ordered, that the defendant do pay the said several sums to the registrar of the court on the                      day of                      18                      .

(a) And it is further ordered, that if the defendant shall on or before the said last-mentioned day pay to the registrar the said sums respectively above ordered to be paid for damages and costs, and also return to the plaintiff the said chattels, and if the plaintiff shall then accept the same, then satisfaction of this judgment shall be entered up by the registrar on the production to him of a receipt for the said chattels signed by the plaintiff or his attorney or agent into court.

Acknowledgment  
of payment  
into court.

| £     | s.    | d.    |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(a) This paragraph is not to be added unless it be part of the order of the judge.

## 189. (See p. 187.)

WARRANT OF EXECUTION IN DETINUE AGAINST GOODS OF  
DEFENDANT.

Whereas at a court holden at                      on the                      day  
 of                      18                      , the plaintiff obtained a judgment against  
 the defendant for the sum of                      the same being assessed

by this court to be the value of certain chattels of the plaintiff wrongfully detained by the defendant, and for the further payment of £ . for damages for the detention of the said chattels, and of £ for costs; and thereupon it was ordered by the court that the defendant should pay the same to the registrar of this court on the day of [or by instalments of for every days, the first instalment to be paid on the day of 18 ]:

\* And it was further ordered, that the defendant should on or before the said last-mentioned day pay to the registrar the said sums respectively above ordered to be paid for damages and costs, and also return to the plaintiff the said chattels, and if the plaintiff should then accept the same, then satisfaction of the said judgment should be entered up by the registrar on the production to him of a receipt for the said chattels signed by the plaintiff or his solicitor.\*

And whereas † the defendant did not on the said day of 18 , return the said chattels to the plaintiff, and † default has “also” been made in payment according to the said orders:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*) the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

[*N.B.*—If the judgment do not contain the words between asterisks omit those words in the warrant, and also the words between the marks (†) and (†) and the word “also.”]

|                                   |     |     |     |     |     | £ | s. | d. |
|-----------------------------------|-----|-----|-----|-----|-----|---|----|----|
| Value of goods detained           | ... | ... | ... | ... | ... |   |    |    |
| Damages for their detention       | ... | ... | ... | ... | ... |   |    |    |
| Costs                             | ... | ... | ... | ... | ... |   |    |    |
| Paid into court                   | ... | ... | ... | ... | ... |   |    |    |
| Remaining due                     | ... | ... | ... | ... | ... |   |    |    |
| Poundage for issuing this warrant | ... | ... | ... | ... | ... |   |    |    |
| Total amount to be levied         | ... | ... | ... | ... | ... |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after

the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

19 & 20 Vict.  
c. 108, s. 46.

Application was made to the registrar for this warrant at  
minutes past the hour of            in the            noon of the  
day of            18    .

190. (See p. 43.)

ORDER UNDER THE FRIENDLY SOCIETIES AND OTHER ACTS.

Upon hearing this cause at a court this day holden it is ordered that the defendant do [*here insert the terms of the order made by the court*] :

And it is further ordered, that [*recite terms of order*].

191. (See p. 43.)

ORDER FOR WARRANT OF EXECUTION TO ISSUE UNDER THE  
FRIENDLY SOCIETIES AND OTHER ACTS.

Whereas at a court holden at            on the  
day of            18    it was ordered by the said court [*here insert the terms of the order of the court*] :

And it was then further ordered, that [*recite terms of order*].

And whereas it appears to the court that the defendant has not obeyed either of the said orders, although demand in that behalf was duly made upon him :

It is therefore ordered, that a warrant of execution issue for the said sum, being the amount of such penalty and the costs thereof.

192. (See p. 43.)

WARRANT OF EXECUTION AGAINST THE GOODS UNDER THE  
FRIENDLY SOCIETIES AND OTHER ACTS.

Whereas at a court holden at            on the  
day of            18    , it was ordered by the said court, that  
[*here insert the terms of the order of the court*] :

And it was then further ordered, that [*recite terms of order*].

And whereas the defendant has not obeyed either of the said orders :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount of such penalty and costs, including the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such

part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this                      day of  
18 .

By the Court,  
Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                          | £ | s. | d. |
|------------------------------------------|---|----|----|
| Amount ordered to be paid ... ..         |   |    |    |
| Costs ... ..                             |   |    |    |
| Poundage for issuing this warrant ... .. |   |    |    |
| Total amount to be levied... ..          |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at 19 & 20 Vict.  
minutes past the hour of                      in the                      c. 108, s. 46.  
noon of the                      day of                      18 .

### 193. (See p. 353.)

#### WARRANT OF COMMITMENT FOR CONTEMPT.

To the High Bailiff and others the Bailiffs of the said Court, 9 & 10 Vict.  
and all Peace Officers within the jurisdiction of the said c. 95, s. 112.  
Court, and to the Governor or Keeper of the [*prison used*  
*by the court*].

Whereas at a court holden on this day *A.B.* wilfully insulted the judge during his sitting in court [*or C.D.*, the registrar, high bailiff, bailiff, or officer (*as the case may be*) of the said court during his attendance in court, *or* wilfully interrupted the proceedings of the said court, *or* wilfully misbehaved in the said court]:

These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said *A.B.* and to deliver him to the governor [*or keeper*] of the above-named prison, and you the said governor [*or keeper, &c.*] to receive the said *A.B.*, and him safely to keep in the said prison for                      days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Given under the seal of the Court this                      day of  
18 .

Judge of the Court.



## 194. (See p. 188.)

## ORDER UNDER THE MERCANTILE LAW AMENDMENT ACT, 1856.

19 & 20 Vict.  
c. 97, s. 2.

Upon hearing this cause (the same being for breach of contract to deliver specific goods for a price in money), at a court holden this day, it being adjudged that the plaintiff is entitled to recover, it is, upon the application of the plaintiff, found and adjudged that the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered, are as follows: (that is to say) [*here enumerate the goods undelivered*]; and that the plaintiff would have been liable to pay the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] for the delivery thereof; and that the plaintiff will have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods shall be delivered under execution as hereinafter mentioned, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods shall not be so delivered: and thereupon judgment being now given for the plaintiff, it is, upon the application of the plaintiff, ordered that the said goods be delivered by defendant to the plaintiff, on the payment by him of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] on or before the day of now next ensuing, and that in default thereof execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*], of the said goods; and that the defendant shall not have the option of retaining the same upon payment of the damages lastly assessed in the event of the non-delivery of the goods; and that the plaintiff do recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages and £ for costs.

And it is further ordered, that if the said goods or any part thereof cannot be found within the district of this court, the bailiff of this court shall distrain the defendant by all his lands and chattels within the district of this court till the defendant deliver the said goods, or, at the option of the plaintiff, the said bailiff shall cause to be made of the defendant's goods the said sum secondly above assessed for damages, or a due proportion thereof.

## 195. (See p. 188.)

DISTRINGAS AND WARRANT OF EXECUTION AGAINST DEFENDANT'S GOODS FOR THE AMOUNT OF DAMAGES FOR NON-DELIVERY OF THE GOODS (SUPPOSING THE GOODS DELIVERED UNDER THE ORDER AND DISTRINGAS) AND COSTS, UNDER THE MERCANTILE LAW AMENDMENT ACT, 1856.

19 & 20 Vict.  
c. 97, s. 2.

Whereas at a court holden at on the day of 18, the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff upon

payment by the plaintiff of the sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the following goods; that is to say [here enumerate the goods enumerated in the judgment]; and by the said judgment it was found and adjudged that the plaintiff will have sustained damages to the amount of £ [here insert the sum assessed for damages if the goods be delivered] if the said goods shall be delivered to the plaintiff under this warrant, and to the amount of £

[here insert the sum assessed for damages in the event of the non-delivery of the goods] if the said goods shall not be so delivered, and judgment being then given for the plaintiff, it was thereupon ordered that execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods], and that the plaintiff do recover against the defendant the said sum of £ [here insert the sum assessed for damages if the goods be delivered] for damages, and £ for costs:

And it was further ordered, that if the said goods or any part thereof should not be found within the district of this court, the bailiff of this court shall distrain the defendant by all his lands and chattels within the district of this court till the defendant deliver the said goods, or, at the option of the plaintiff, the said bailiff shall cause to be made of the defendant's goods the said sum of £ [here insert the sum found for damages if the goods be not delivered], or a due proportion thereof:

And whereas the said goods have not been delivered according to the said order, and the said sum of £ so payable by the plaintiff as aforesaid has been paid to the registrar of this court, and the plaintiff has not expressed his option to have the said sum of £ [here insert the sum found for damages if the goods be not delivered], or a due proportion thereof, made of the goods of the defendant:

These are therefore to require and order you forthwith to seize the said goods so not delivered as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff, and pay over to the defendant upon seizure of the said goods the said sum of £ [here insert the sum to be paid by the plaintiff for the delivery], which is delivered to you together with this warrant:

And if the same cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant, wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods to you; and further to make and levy, by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*) the sum stated at the foot of this warrant, being the amount due to the plaintiff under the

said order, including the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this            day of  
18 .

By the Court,  
Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                                           | £ | s. | d. |
|-----------------------------------------------------------|---|----|----|
| Amount found for damages if the goods be delivered ... .. |   |    |    |
| Sum adjudged for costs ... ..                             |   |    |    |
| Poundage for issuing this warrant ... ..                  |   |    |    |
| Total amount to be levied ... ..                          |   |    |    |

NOTICE.—The goods and chattels seized for damages and costs are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at  
minutes past the hour of            in the            noon  
of the            day of            18 .

[N.B.—When a plaintiff sues out this warrant, he must pay to the registrar the amount found by the judgment to be payable by plaintiff for the delivery of the goods, and the registrar must hand over such amount to the bailiff with this warrant, for the bailiff to pay to the defendant, if either the defendant delivers the goods to the bailiff or the bailiff obtains possession of them under this warrant.]

#### 196. (See p. 188.)

WARRANT OF EXECUTION AGAINST DEFENDANT'S GOODS UNDER THE MERCANTILE LAW AMENDMENT ACT, WHERE PLAINTIFF EXERCISES THE OPTION OF HAVING THE DAMAGES ASSESSED FOR THE NON-DELIVERY OF THE GOODS (WHERE THE GOODS ARE NOT DELIVERED PURSUANT TO THE ORDER) LEVIED BY DISTRESS AND SALE OF DEFENDANT'S GOODS.

19 & 20 Vict.  
c. 97, s. 2. Whereas at a court holden at            on the  
day of            18 , the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff, upon payment by the plaintiff of the sum of £            [here insert the sum to be paid by plaintiff for the delivery] of the following goods; that is to say [here enumerate the goods enumerated in

the judgment]; and by the said judgment it was found and adjudged that the plaintiff will have sustained damages to the amount of £ [here insert the sum assessed for damages if the goods be delivered] if the said goods shall be delivered to the plaintiff under this warrant, and to the amount of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods] if the said goods shall not be so delivered, and judgment being then given for the plaintiff, it was thereupon ordered that execution do issue for the delivery to the plaintiff on payment by the plaintiff of the said sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods] and that the plaintiff do recover against the defendant the said sum of £ [here insert the sum assessed for damages if the goods be delivered] for damages, and £ for costs:

And it was further ordered that if the said goods or any part thereof should not be found within the district of this court the bailiff of this court should distrain the defendant by all his lands and chattels within the district of this court till the defendant deliver the said goods, or, at the option of the plaintiff, the said plaintiff should cause to be made of the defendant's goods the said sum of £ [here insert the sum found for damages if the goods be not delivered], or a due proportion thereof: and whereas the said goods have not been delivered according to the said order, and the plaintiff has expressed his option to have the said sum of £ [here insert the sum assessed for damages in the event of non-delivery of the goods] made of the goods and chattels of the defendant: these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the cost of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this            day of  
18 .

By the Court,  
Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

|                                                               | £ | s. | d. |
|---------------------------------------------------------------|---|----|----|
| Amount found for damages if the goods be not delivered ... .. |   |    |    |
| Sum adjudged for costs ... ..                                 |   |    |    |
| Poundage for issuing this warrant ... ..                      |   |    |    |
| Total amount to be levied ... ..                              |   |    |    |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the defendant.

19 & 20 Vict. Application was made to the registrar for this warrant  
c. 108, s. 46. at minutes past the hour of in the fore [or  
after] noon of the day of 18 .

197. (See p. 130.)

DEFENDANT'S ADMISSION.

Order xii., I the undersigned defendant admit the truth of the allega-  
rule 3. tions in the plaint, and hereby submit to the judgment of the  
court thereon.

(Signed) C.D., Defendant.

Signed in the presence of

[This paper, marked A, is the paper referred to in the an-  
nexed affidavit.]

198. (See p. 130.)

AFFIDAVIT OF SIGNATURE TO DEFENDANT'S ADMISSION.

Order xii., I, of , gentleman, a solicitor of  
rule 3. Her Majesty's Supreme Court of at Westminster,  
make oath and say, that I was present on the day  
of one thousand eight hundred and seventy ,  
and did see the above-named C.D., the defendant, sign the  
statement hereunto annexed, marked with the letter A, and  
that the name set to the said statement is in the handwriting  
of the defendant, and that the name set to the said statement  
as the witness attesting the same is in my handwriting.

199. (See p. 301.)

DEFENDANT'S STATEMENTS.

Order xii., I the undersigned defendant [or one of the defendants] dis-  
rule 2. claim all interest under the will of the said E.F. named in the  
plaintiff's particulars [or as heir-at-law of, or as next of kin, or  
one of the next of kin of E.F., deceased, named in the plaintiff's  
particulars].

Or, I the undersigned defendant state, that I admit [or  
deny] [here repeat in the language of the particulars the state-  
ments admitted or denied].

*Or, I the undersigned defendant submit that upon the facts stated in the plaintiff's particulars it does not appear that there is any agreement which can be legally enforced [or that it appears upon the plaintiff's particulars that I am jointly liable with one E.F., who is not a party to the action, and not severally liable as by the particulars appear, or that it appears by the said plaintiff's particulars that G.H. should have been a joint plaintiff with the said A.B. in the said action, or as the case may be].*

*[Or that the plaintiff has conveyed [or assigned] his interest in the said mortgage [or equity of redemption] to one I.J., or that I have conveyed or assigned to H.L., by way of further charge for securing the sum of £ , the equity of redemption in the property sought by the action to be foreclosed.*

*[Or that since the dissolution of the partnership the plaintiff has executed a deed under seal, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading [or as the case may be].*

(Signed) C.D., Defendant.

Where filed by solicitor, add—

This statement was filed by , of ,  
Solicitor for the Defendant.

## 200. (See p. 302.)

### ORDER.—ADMINISTRATION ACTION.

It is ordered that the following accounts and inquiries be taken and made; that is to say—

*In creditor's action.*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In action by legatees.*

An account be taken of the legacies given by the testator's will.

*In action by next of kin.*

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next of kin [or one of the next of kin] of the intestate.

*[After the first paragraph, the order will, where necessary, order, in a creditor's action, inquiry and accounts for legatees, devisees, heirs-at-law, and next of kin. In actions by claimants other than creditors, after the first paragraph in all cases an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's action.]*

3. An account of the funeral and testamentary expenses.

4. An account of the personal estate of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the personal estate of the deceased are outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the                      day of                      next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the registrar shall find it necessary for carrying out the objects of the action to sell any part of the personal estate of the deceased, that the same be sold accordingly.

8. And that Mr.                      be receiver in the action, and receive and get in all outstanding debts and outstanding personal estate of the deceased, and pay the same into the hands of the registrar [and shall give security by bond for the due performance of his duties to the amount of £                      ].

9. And it is further ordered, that if the personal estate of the deceased be found insufficient for carrying out the objects of the action, then the following further inquiries be made and accounts taken; that is to say,

10. That an inquiry be made what real estate the deceased was seised of or entitled to at the time of his death.

11. What are the incumbrances (if any) affecting the real estate of the deceased, or any part thereof.

12. An account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

13. And that the real estate of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the action, be sold, with the approbation of the judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

14. And it is ordered that                      shall have the conduct of the sale of the real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar, and that in case any doubt or difficulty shall arise the papers shall, with the like approval, be submitted to                      Esquire, to settle.

15. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the registrar shall advertise in the newspapers according to the practice of the court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

16. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed before the                      day of                      , and that the registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the                      day of                      .

17. And lastly it is ordered, that this action [or matter] stand adjourned for making a final decree to the                      day of                      .

[Such part only of this order is to be used as is applicable to the particular case.]



201. (*See pp. 302, 305.*)

## FORM OF ORDER UNDER ORDER XVIII., RULE 15, OR UNDER ORDER XI.

It appearing to me that it will be for the benefit of the estate that the remaining outstanding debts be sold, I do order that the debts now due to the estate of *E.F.*, the testator [*or* intestate] in the plaint in this action mentioned be sold as soon as conveniently may be by [the receiver] by private contract [*or* public auction] for the highest price that can be obtained for the same.

Dated this                      day of                      .

*J.S.*, Judge.

202. (*See pp. 302, 305.*)

## FORM OF ORDER UNDER ORDER XVIII., RULE 14, OR UNDER ORDER XI.

It appearing to me that it is necessary, for carrying out the objects of this action, that the real estate [*or* part of the real estate] of the deceased be sold, I do order that all that freehold [*copyhold, or leasehold*] messuage or tenement, &c., [*setting out parcels as in last conveyance*], being the real [*or* part of the real] estate of *E.F.*, late of                      in the county of                      , deceased, the testator [*or* intestate] in the plaint in the suit mentioned, be offered for sale by public auction at the                      Hotel at                      by Mr.                      auctioneer, and be then and there sold [provided the sum bid be not less than £                      *or*] to the highest bidder without reserve.

Dated this                      day of                      .

*J.S.*, Judge.

203. (*See p. 302.*)

## ORDER FOR REFERENCE IN FORECLOSURE ACTION BY LEGAL MORTGAGEE.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage mentioned in the plaint (making allowance on one side or the other for any rents or profits received by the plaintiff and for any sums of money lawfully expended by the plaintiff about the mortgaged premises), and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the                      day of                      what he shall find to be due for principal and interest as aforesaid and for costs: and upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff do reconvey the said mortgaged premises, free and clear from all incumbrances done by him,

or any claiming by, from, or under him, and do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid, by the time aforesaid, then it is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said premises, and the registrar is to settle the conveyance if the parties differ about the same; and it is further ordered, that after the expiration of the said six months, the plaintiff shall be at liberty to apply to the court for a judgment for the foreclosure of the said mortgage.

[*N.B.*—Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin, It is declared that the sum of £                      is now due to the plaintiff for principal and interest on the mortgage mentioned in the plaint, and it is ordered that the registrar do tax the plaintiff's costs of this action, and that.]

#### 204. (See p. 302.)

##### ORDER OF SALE IN AN ACTION BY A LEGAL OR EQUITABLE MORTGAGEE OR PERSON ENTITLED TO A LIEN.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or equitable mortgage or lien*] mentioned in the plaint, and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the                      day of                      what he shall find to be due for principal and interest as aforesaid, and for costs: and upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff [do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and] do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid, for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or the premises subject to the said equitable mortgage or lien*] be sold with the approbation of the registrar: and it is ordered that the money to arise by such sale be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

205. (*See p. 302.*)

## ORDER.—DISSOLUTION OF PARTNERSHIP.

It is declared that the partnership set forth in the plaintiff's particulars between the plaintiff and defendant ought to stand dissolved as from the                      day of                      , and it is ordered that the dissolution thereof as from that day be advertised in the "London Gazette," &c.

And it is ordered that                      be the receiver of the partnership estate and effects in this action, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership.

2. An account of the debts and liabilities of the said partnership.

3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account exhibited in this action and marked A, and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the                      day of                      , and that the registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the                      day of                      .

And lastly it is ordered that this action stand adjourned for giving judgment to the                      day of                      .

206. (*See p. 302.*)

## JUDGMENT FOR FORECLOSURE.

Whereas it appears to the court that the defendant has not paid into court the sum                      which was on the                      day of                      last certified by the registrar to be due to the plaintiff for principal and interest upon the mortgage mentioned in the plaintiff's particulars, and for costs pursuant to the decretal order made in this action on the                      day of                      last, and that the period of six months has elapsed since the said                      day of                      .

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

## 207. (See p. 302.)

## PARTNERSHIP.

*Judgment.*

It is ordered that the fund now in court, amounting to the sum of £ , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting in the whole to £ .

2. In payment of the costs of all parties in this action, amounting to £ . [These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of £ to the plaintiff as his share of the partnership assets, and of the sum of £ , being the residue of the said sum of now in court to the defendant as his share of the partnership assets.

[Or, And that the remainder of the said sum of £ be paid to the said plaintiff [or defendant] in part payment of the sum of £ certified to be due to him in respect of the partnership accounts.

And that the defendant [or plaintiff] do, on or before the day of , pay to the plaintiff [or defendant] the sum of £ being the balance of the said sum of £ due to him which will then remain due].

## 208. (See p. 306.)

## NOTICE OF ORDER TO ABSENT PARTY.

15 & 16 Vict.  
c. 86, s. 42. Take notice that on the day of the order of which a copy is herewith annexed was made in this action, and that from the service of this notice you will be bound by the proceedings in the above action in the same manner as if you had been originally made a party to it, and that you may attend the proceedings under the said order, and that you may apply to the court to add to the order.

Dated this day of 18 .

To Registrar.

## 209. (See p. 303.)

## NOTICE TO CREDITOR TO PROVE HIS CLAIM.

You are hereby required to prove the claim sent in by you against the estate of A.B. deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the day of next, and by attending at my office on the day of 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 18 .

To Registrar.

210. (*See p. 304.*)

## NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM.

The claim sent in by you against the estate of *A.B.* deceased has been allowed at the sum of \_\_\_\_\_, with interest thereon at \_\_\_\_\_ per cent. per annum, from the day of \_\_\_\_\_ 18 \_\_, and \_\_\_\_\_ for costs.

[*If part only allowed, add,* If you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the day of \_\_\_\_\_ next, and by attending at my office on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_.

Registrar.

211. (*See p. 306.*)

## REGISTRAR'S CERTIFICATE.

In obedience to the order of this court made in the above action, I hereby certify that the result of the accounts and inquiries [*or of the sale and apportionment*] which have been taken and made in pursuance of the \_\_\_\_\_ made in this \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_, is as follows:—

The plaintiffs and defendants have attended by themselves or by their respective solicitors.

*Notice of order.*

Notice of the said order of the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_ has been served upon \_\_\_\_\_.

The persons so served include all the \_\_\_\_\_ now living and the personal representatives of such of them as are dead, except such as are parties to this action, and except hereinafter named.

Service of notice of the said order upon the said \_\_\_\_\_ was dispensed with.

*Personal estate account.*

The defendant \_\_\_\_\_ the executor [*or administrator*] of \_\_\_\_\_ the testator [*or intestate*] named in the said \_\_\_\_\_ have received personal estate to the amount of £ \_\_\_\_\_, and they have paid or are entitled to be allowed on account thereof sums to the amount of £ \_\_\_\_\_, leaving a balance due from [*or to*] them of £ \_\_\_\_\_ on that account.

*References to account.*

The particulars of the above receipts and payments appear in the account marked *A.* verified by the affidavit of the said defendant \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ and the account marked *B.* verified by the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ and which accounts are to be filed with this certificate.

*Variations from Accounts.*

Except that in addition to the sums appearing in such account to have been received, the said defendant [*or plaintiff*] is [*or are*] charged with the following sums; (that is to say,) £ , and except that of the items of disbursement in the said account I have disallowed those numbered , and I have deducted from the item numbered the sum of £ and in addition to the disbursements appearing in such account the said defendant ha paid and been allowed the sum of £ .

*Special allowances in accounts.*

The payments allowed to the said defendant [*or plaintiff*] in the said account include the sum of £ paid into court to the credit of this cause, on the day of 18 .

*Reference to transcript of account.*

The before-mentioned account marked A has been altered, and the account marked A B, and which is also to be filed with the certificate, is a transcript of the said account marked A as altered and passed.

*No personal estate received.*

The defendant the executor [*or administrator*] of the testator [*or intestate*] named in the said have not, nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [*or intestate*].

*Funeral expenses.*

The funeral expenses of the testator [*or intestate*], amounting to the sum of £ have been paid and are allowed the defendant [*or plaintiff*] the executor [*or administrator*] of the said testator [*or intestate*] in the said account of personal estate [*hereinafter mentioned*].

*Debts.*

The debts of the testator [*or intestate*, including the plaintiff's] which have been allowed are set forth in the schedule hereto, and, with the interest thereon, and costs mentioned in the said schedule, are due to the plaintiff and the other persons named therein, and amount altogether to . No other person has been allowed, or come in and proved, any debt against the estate of the said testator [*or intestate*], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specialty are set forth in the first part of the said schedule, and amount to £ ; such as are simple contract are set forth in the second part of said schedule, and amount to £ .

*Interest on debts.*

The interest on such debts is computed down to the date of this certificate, and after the rate of 4l. per centum per annum, from the day of 18 , the date of the said order, unless otherwise specified in the said schedule.

*Legacies and annuities.*

The legacies given by the testator, other than annuities, are set forth in the first part of the                      schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £                      .

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said schedule. Such arrears amount to £                      .

*Interest on legacies.*

The interest on such legacies is computed down to the date of this certificate, and after the rate of 4*l.* per centum per annum, from the                      day of                      18                      , the end of one year after the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate, and from the testator's death, unless otherwise specified in the said schedule.

*Outstanding estate.*

The personal estate of the said testator [*or* intestate] [not specifically bequeathed] outstanding or undisposed of consists of the particulars set forth in the                      schedule hereto.

*Real estate.*

The real estate which the said testator [*or* intestate] was seised of or entitled to consists of the particulars set forth in the                      schedule hereto.

*Incumbrances on real estate.*

The incumbrances affecting the said testator's [*or* intestate's] real estate are specified in the                      schedule hereto.

*Rents and profits account.*

The defendants [or plaintiff                      ] the trustee named in the said decretal order have received rents and profits of the testator's real estate                      to the amount of £                      and they have paid or are entitled to be allowed on account thereof sums to the amount of                      , leaving a balance due from [*or* to] them of £                      on that account.

*No rents and profits received.*

The defendants [or plaintiff                      ] the trustees named in the said order have not, nor hath any or either of them or any person or persons by their or any or either of their order, or for their or any or either of their use, received any sum or sums of money on account of the rents and profits of the testator's [*or* intestate's] real estate.

*Next of kin.*

The next of kin, according to the statutes for the distribution of the effects of intestates, of                      the intestate named in the said                      living at the time of his death were of whom the said                      have since died.

The legal personal representative of the said

The legal personal representative of the said

The legal personal representative of the said

Dated this                      day of                      .

Registrar.



## 212. (See p. 306.)

## NOTICE THAT REGISTRAR'S CERTIFICATE MAY BE INSPECTED.

Take notice that the certificate of the result of the inquiries made and accounts taken by me under the order of this court made on the            day of            in this action lies in my office and can be inspected by you up to and inclusive of the            day of            [here insert the day before the cause is to be further heard].

To

Registrar.

## 213. (See pp. 168, 218.)

## BOND TO BE GIVEN BY RECEIVER.

Know all men by these presents, that we, *A.B.*, of, &c., and *C.D.*, of, &c., and *E.F.*, of, &c., are jointly and severally held and firmly bound to *G.H.*, registrar of the county court of

holden at           , in £            to be paid to the said *G.H.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this            day of            one thousand eight hundred and           .

And whereas a plaint in equity has been entered in this court by *A.B.* against *C.D.* for the purpose of [here insert object of suit] :

And whereas the said *A.B.* has been appointed, by order of the above-mentioned court, to receive the rents and profits of the real [or freehold, or copyhold, or leasehold] estate [or estates] [and to get in the outstanding personal estate] of *C.D.*, the testator in the said plaint named :

Now the condition of this obligation is such, that if the above-bounden *A.B.* do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estates, and in respect of the personal estate, of the said *C.D.* [or as may be] at such periods as the said court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said court had directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise shall remain in full force and virtue.

A.B. (L.S.)

C.D. (L.S.)

Signed, sealed, and delivered by the above-bounden  
in the presence of           .

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.

## 214. (See p. 307.)

## WARRANT OF ASSISTANCE.

Whereas, according to the tenor and true meaning of an order, bearing date the                      day of                      18                      , made in this action, the said defendant *C.D.* was ordered to deliver up possession to *A.B.* in the said order named of all that, &c. [*as in order*]: and whereas a copy of such order was duly served upon the said *C.D.*, yet nevertheless he the said *C.D.*, and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep possession of the said house [*or tenement and premises*]: these are, therefore, to authorise and require you to forthwith enter into and upon the said messuage [*or tenements and premises*], and that you do remove, eject, and expel the said *C.D.*, his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [*or tenement and premises*], and every part and parcel thereof, and that you do place and put the said *A.B.* and his assigns into the full, peaceable, and quiet possession thereof, and defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them or any of them, according to the true intent and meaning of the said order; and herein you are not in anywise to fail.

Given under the seal of the Court this                      day of  
18                      .

By the Court,

Registrar.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

## 215. (See p. 307.)

## WARRANT OF POSSESSION.

Whereas on the                      day of                      18                      , this court did order in this action that you, the high bailiff of this court, should [*or that A.B. should*] take possession of the goods and chattels of *E.F.* deceased, in the said action, and which at the date of the said order were in the possession of the defendant [*and sell and convert the same into money or keep and hold the same to abide the further order of the court, as the case may be*]:

These are therefore by virtue of the said order and the statute in such case made and provided, to will and require, authorise and empower you and every one of you to whom this warrant is directed forthwith to enter into and upon the house and houses of the said *C.D.*, and also in all other place or places belonging to the said *C.D.* where any of the goods or chattels, part of the estate of the said *E.F.* deceased, are suspected to be; and there to seize all the goods and chattels whatsoever belonging to the estate of the said *E.F.* deceased.

And in case of resistance or of not having the key or keys of any door or lock of any premises belonging to the said *C.D.*,

where any of the goods or chattels, part of the estate of the said *E.F.*, are suspected to be, you shall break open or cause the same to be broken open, for the better execution of this warrant.

Given under the seal of the Court this                      day of  
18 .

By the Court,

Registrar.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof,

(216. *See p. 113.*)

#### NOTICE OF CHANGE OF SOLICITOR.

To the Registrar of the Court.

Order  
xxxvii.

Take notice that I, *A.B.* [*or C.D.*], have hitherto employed as my solicitor *G.H.*, of                      in the above-mentioned action, but that I have ceased to employ him, and that my present solicitor is *I.K.*, of

*A.B.* [*or C.D.*]

217. (*See p. 310.*)

#### ORDER OF PAYMENT OF LEGACY INTO HIGH COURT OF JUSTICE.

Whereas it has been found by this court by its decree of the                      day of                      in this suit [*or matter*], that *K.L.*, of                      is entitled to the sum of                      ; and whereas the said *K.L.* is an infant [*or absent beyond seas*], and it appearing to the court that it is desirable that, under the power given to it by the fifth section of the Act of Parliament passed in the twenty-eighth and twenty-ninth years of Her Majesty's reign, chapter ninety-nine, *C.D.*, the defendant in this suit [*or matter, as the case may be*] should be ordered to pay such sum of money to the paymaster-general of the Chancery division of the High Court of Justice, in accordance with the provisions of section thirty-two of an Act passed in the session of Parliament held in the thirty-sixth year of the reign of His Majesty King George the Third, chapter fifty-two, it is ordered that the said                      do pay the same accordingly, and do within                      days produce to the registrar of this court the certificate of the said paymaster-general of the payment to him of such money.

By the Court,

Registrar.

#### [ENDORSEMENT ON LAST ORDER.]

*N.B.*—Your attention is drawn to the following provisions of the Act 36 Geo. 3, c. 52, and to the rule of this court.

Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found or declared entitled by any county court in any suit or matter under this Act may

be ordered by the court to be paid to the accountant-general of the Court of Chancery, in accordance with the provisions of section thirty-two of an Act passed in the session of Parliament held in the thirty-sixth year of the reign of His Majesty King George the Third, chapter fifty-two; and the person ordered to pay the same shall, within such time as the court shall direct, produce to the registrar of the court the certificate of the accountant-general of the payment of such money; and if default be made in such payment the judge may direct a warrant of execution to issue to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels of such person a sum of money equal in amount to the sum which he was ordered to pay to the said accountant-general and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the said accountant-general under the direction of the court.

*Rule of Court.*—Where default shall be made in the production of the certificate of the accountant-general the registrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with section 5 of the Act.

#### 218. (See p. 299.)

#### ORDER OF TRANSFER OF SUIT OR MATTER TO HIGH COURT OF JUSTICE.

Whereas it appearing that the subject-matter of this suit exceeds in amount the sum of 500*l.* it is ordered that this suit [*or matter*] be transferred to the . . . division of the High Court of Justice, together with the annexed certificate of the registrar of this court, showing the state of the suit [*or matter*] and the proceedings that have been had therein in this court.

By the Court,

Registrar.

#### 219. (See p. 302.)

#### ORDER IN THE NATURE OF AN INJUNCTION.

The plaintiff undertaking [by his counsel *or* solicitor] to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: now, therefore, *C.D.*, the defendant in this cause, his servants, agents, and workmen, are hereby strictly enjoined and restrained from pulling down or suffering to be pulled down the house being Number 16, Blauk Street, Islington, in the county of Middlesex, and from selling the materials whereof the said house is composed [*or* from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes or note, or written securities or security, in the name of the

partnership firm of \_\_\_\_\_, and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise, or undertaking, *or, as the case may be,*] until the day after the day upon which the cause shall be heard, or until further order [*or until the* \_\_\_\_\_ day of \_\_\_\_\_, upon which day this court will consider whether this order shall be further continued].

Dated this \_\_\_\_\_ day of \_\_\_\_\_

J.S., Judge.

If you the said C.D. [your servants, agents, or workmen] act in disobedience to this order, you the said C.D. will be liable to be committed by this court, and also be liable to have your estate sequestered.

## 220. (See p. 307.)

### NOTICE OF APPLICATION FOR COMMITTAL.

Take notice that the plaintiff A.B. will on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, apply to this court for an order for your committal to prison for having disobeyed the order of this court made on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, enjoining and restraining you [*or for having neglected to obey the order made on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, requiring you*] (*here set out the mandatory part of the order*); and further take notice that you are hereby required to attend the court on the first-mentioned day to show cause why an order for your committal should not be made.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

18\_\_\_\_

E.F., Registrar.

To C.D., the Defendant.

## 221. (See p. 308.)

### ORDER OF COMMITTAL FOR BREACH OF AN ORDER IN THE NATURE OF AN INJUNCTION.

Whereas by an order of this court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ [*here recite the order*]: Now, upon the application of the plaintiff, and upon hearing the defendant [*or, if the defendant does not appear, reading the affidavit of X.Y., or, where service has been by bailiff, of L.M., a bailiff of this court or the county court of \_\_\_\_\_ holden at \_\_\_\_\_, showing, or being satisfied on oath, that a copy of the said order and notice of this application have been severally served upon the defendant C.D., and upon reading the affidavit of, &c. [enter evidence], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [or*

affidavits], that the said defendant *C.D.* has been guilty of a contempt of this court by a breach of the said order, doth order that the said defendant *C.D.* do stand committed to [*here insert prison used by the court*] for his said contempt.

222. (*See p. 308.*)

ORDER OF COMMITTAL FOR NEGLECT TO OBEY ORDER.

Whereas by an order of this court, dated the                      day of 18 [*here recite the order*]: Now, upon the application of the plaintiff, and upon hearing the defendant [*or, if the defendant does not appear, reading the affidavit of X.Y., or, where service has been by bailiff, the endorsement of L.M., a bailiff of this court, or the county court of                      holden at                      , showing, or being satisfied on oath, that a copy of the said order and notice of this application have been severally served upon the defendant C.D.*], and upon reading the affidavit of, &c. [*enter evidence*], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [*or affidavits*], that the said defendant *C.D.* has been guilty of a contempt of this court by neglecting to obey the said order, doth order that the said defendant *C.D.* do stand committed to [*here insert prison used by the court*] for his said contempt.

223. (*See p. 307.*)

WARRANT OF COMMITTAL.

To the High Bailiff and others, the Bailiffs of the said Court, and all Peace Officers within the jurisdiction of the said Court, and to the Governor or Keeper of the [*here insert prison used by the court*].

Whereas by an order bearing date the                      day of                      it was ordered that the defendant *C.D.* should stand committed to prison for contempt of this court:

These are therefore to require you forthwith to arrest and apprehend the defendant *C.D.*, and him safely convey and deliver to the governor or keeper of the [*prison used by this court*], and you, the said governor or keeper, to receive the defendant *C.D.* until further orders of this court.

Dated this                      day of                      18 .  
*E.F.*, Registrar of the Court.

224. (*See pp. 307, 309.*)

NOTICE OF APPLICATION FOR DISCHARGE FROM CUSTODY.

Take notice that I intend on the                      day of 18 , to apply to this court [*or the registrar of this court*] to discharge me from custody, I being desirous of clearing my contempt.

Dated this                      day of                      18 .  
*C.D.*, Defendant.

To *A.B.*, Plaintiff.

## 225. (See p. 309.)

## ORDER OF DISCHARGE FROM CUSTODY.

Upon application made this            day of            by  
for the defendant, who was committed to prison for contempt  
by order of this court dated the            day of  
18   , and upon reading the affidavit of the defendant filed the  
day of            18   , showing that he is desirous  
of clearing his contempt, and upon hearing            the  
plaintiff [or if no one appears for plaintiff], then upon being  
satisfied that notice of this application has been duly served  
upon the plaintiff, this court    I, the undersigned registrar  
of this court, do hereby order that the said defendant be dis-  
charged out of the custody of the governor [or keeper] of  
[here insert name of prison] as to the said contempt, but not  
as to the costs of the said contempt.

Dated this            day of            18   .

E.F., Registrar of the Court.

## 226. (See p. 313.)

## AFFIDAVIT UNDER 30 &amp; 31 VICT. c. 142, s. 224.

In the County Court of            holden at

In the Matter of the County Courts Act, 1867, and of  
[add the title of the particular trust, as "the trusts of a certain  
indenture of mortgage, dated the            day of            ,  
and made between A.B. and C.D."]

I, C.D., of [address and description], make oath and say as  
follows:—

1. State place for service as—my house being            is  
the place where I am to be served with any notice or applica-  
tion relating to the trust fund hereinafter mentioned.

2. State the amount of money or stock proposed to be paid, or  
transferred, or security deposited in trust to attend the orders of  
the court, as under the provisions of the said Act, I desire to  
pay into the post-office savings bank the sum of  
hereinafter mentioned.

3. Set out a short description of the trust and of the instru-  
ment creating it, as by the indenture before mentioned a certain  
messuage situate at            with the appurtenances, was

mortgaged by the said A.B. to me, my heirs and assigns, for  
securing to me the repayment on the            day of  
18   , of the sum of £           , with interest

for the same at the rate of £            per cent. per annum,  
and the said indenture contained a power of sale in case of de-  
fault in payment, and it was by the said indenture declared  
that the moneys to arise from any such sale should, after re-  
taining thereout the expenses of executing the said power, and  
the said principal money and interest, be paid to the said A.B.,  
his heirs or assigns.

The said A.B. died on or about the            day of  
and by his will, dated the            day of  
, appointed E.F., of (v), executor thereof, and de-



vised the said hereditaments, subject to the said mortgage, unto *G.H.*, of (*a*) and *J.K.*, of (*a*) in trust for the said *E.F.*, for his life, and after his death upon certain trusts for sale, and for the division of the proceeds amongst the following persons, namely, the testator's son *M.N.*, of (*a*), and his children or child, and the testator's daughter *O.*, the wife of *P.Q.*, of (*a*), and her children or child.

The said *E.F.* proved the said will in [*state in what court*], and is still living.

The said *G.H.* never acted in the trusts of the said will, &c.

On or about the                      day of                      , I sold the said hereditaments by public auction to *X.Y.*, of [*address and description*], at the price of £                      .

After retaining out of the said £                      the costs of sale, and the sum of                      , being the total amount of principal moneys and interest due upon the said mortgage, and the sum of £                      , being the costs of paying the fund into court, a balance of £                      now remains in my hands, and the sum of £                      , which I desire to pay into the post-office savings bank, in trust to attend the orders of this court is the said balance of £                      .

4. *State the names of the persons interested in, or entitled to, the fund, to the best of the trustee's knowledge or belief, as—*

To the best of my knowledge and belief, the said *G.H.* and *J.K.*, as such trustees as aforesaid, and the said *E.F.*, *M.N.*, and his children or child (*stating, if known, their names*), and *O.P.* and her children or child (*stating, if known, their names*), are the only persons interested in the said fund.

5. *Add submission to answer inquiries, as—*

I submit to answer all such inquiries relating to the application of the said fund of £                      as the court may think proper to make or direct.

Sworn at, &c.

## 227. (See p. 314.)

### PETITION BY PERSON INTERESTED IN FUNDS IN COURT.

In the Matter of the County Courts Act, 1867, and

In the Matter of an affidavit by *E.F.*, of                      and *G.H.*, of                      filed the                      day of 18                      .

[*State shortly the nature of the trust, as e.g. :—*]  
Showeth

1. That *C.D.*, of                      , by his will dated the day of                      , bequeathed to the said *E.F.* and *G.H.*, his trustees named therein, all his residuary personal estate, on trust to pay the dividends and income thereof to his wife for her life, and after her death to divide the said trust funds among his children equally.

2. That the said *E.F.* and *G.H.* on the                      day of 18                      paid into this court the £                      , being, as they allege, the balance of the said trust funds remaining in their hands at that date.

3. That your petitioner claims, as one of the children of the

(*a*) Here insert the present address and description. If the address of any person interested be unknown to the trustee, this fact must be set forth in the affidavit.

above-named *C.D.*, to be entitled to one-fourth share of the said trust funds.

4. That the said *E.F.* and *G.H.* have credited themselves with certain payments which they were not authorised to make.

Your petitioner prays

1. That the accounts of the said *E.F.* and *G.H.*, as such trustees as aforesaid, may be taken by this court.

2. That the requisite directions may be given for ascertaining the share of your petitioner in the said trust funds and paying the same to him.

3. That the said *E.F.* and *G.H.* may be ordered to pay the costs of this petition.

[or 1. That under the will of *C.D.*, late of                      deceased, your petitioner is entitled for his own benefit for his life to the income of the funds paid into court in this matter by *E.F.* and *G.H.* ; your petitioner therefore prays

1. That such income may be ordered to be paid to him for his life.]

*Where the application is for the income for life only of the trust funds, the persons interested or claiming to be interested in the capital need not be served with the application, unless the court should otherwise direct.*

## 228. (See p. 313.)

### CERTIFICATE IN CASE OF MONEY.

In the Matter of the [trusts of                      ].

I hereby certify, that [state name, address, and description of party making the application] has this day filed with me, the registrar of this court, an affidavit entitled as above mentioned, with reference to a trust fund or sum of therein mentioned, which sum, as therein stated, he desires to pay into my name as such registrar as aforesaid into a post-office savings bank, as provided by the above Act.

## 229. (See p. 313.)

### CERTIFICATE IN CASE OF TRANSFER OF STOCK.

In the County Court of                      holden at                      (Seal.)

In the Matter of this

I hereby certify, that [state name, address, and description of party making application] has this day filed with me, the registrar of this court, an affidavit entitled as above mentioned, with reference to a trust fund of £                      Bank 3l. per Cent. Consolidated Annuities in the books of the Governor and Company of the Bank of England, which, as therein stated, he desires to transfer into the names of the treasurer and of the registrar of this court [or the superintendent, &c.], as provided by the above Act.

Dated this                      day of                      18 .  
Registrar of the Court.

## 230. (See p. 314.)

## ACKNOWLEDGMENT OF FILING OF RECEIPT OR TRANSFER TICKET.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
(Seal.)

In the Matter of this \_\_\_\_\_

I hereby acknowledge that [*state the name, address, and description of the party giving to the registrar the receipt of the post-office savings bank, in the case of money, or the transfer ticket in the case of stock*] has this day delivered to me, the registrar of the court, a receipt dated [*name of officer of the post-office savings bank*], for the sum of £ \_\_\_\_\_, stating that [*state receipt*] [*or, a transfer ticket of the Governor and Company of the Bank of England*], stating that [*state as in ticket*].

Registrar of the Court.

## 231. (See p. 314.)

## CERTIFICATE OF DEPOSIT OF SECURITY.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
(Seal.)

In the Matter of this \_\_\_\_\_

I hereby certify that [*state the name, address, and description of the party depositing with the registrar the security*], has this day deposited with me, the registrar of this court, in the name of myself and the treasurer [*here state the nature of the security deposited*].

Registrar of the Court.

## 232. (See p. 314.)

## NOTICE OF PAYMENT INTO POST-OFFICE SAVINGS BANK OR OF TRANSFER OF STOCK OR DEPOSIT OF SECURITY.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_ No. \_\_\_\_\_  
(Seal.)

In the Matter of this \_\_\_\_\_

Take notice, that on the \_\_\_\_\_ day of \_\_\_\_\_ [*state name, address, and description of party who has paid in the money*] under the said Act paid into the post-office savings bank at \_\_\_\_\_ in the name of me, the registrar of this court, the sum of £ \_\_\_\_\_ and in his affidavit filed in this court on the \_\_\_\_\_ day of \_\_\_\_\_ shortly described the instrument creating the trust, and stated the names of the persons interested in or entitled to the fund, to the best of his knowledge and belief, as follows; that is to say [*state from the affidavit the paragraph containing the names of the persons interested or entitled*] [*or, "transferred into the names of* " \_\_\_\_\_ of \_\_\_\_\_ and of me, the registrar "of this court, in the books of the Governor and Company of



## 235. (See p. 242.)

JUDGMENT SUMMONS ON ORDER OR JUDGMENT OF A COURT  
OTHER THAN A COUNTY COURT.

The Debtors Act, 1869.

In the [*title of court issuing summons*].

No. of Judgment summons.

Between A.B., Plaintiff,

[*Address, description,*]

and

C.D., Defendant.

[*Present address, description, and  
if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or order*] against  
the defendant in the                      division of Her Majesty's  
High Court of Justice on the              day of              , for  
the sum of £              and there is now due and payable  
upon the said judgment the sum of £              ] :

You are therefore hereby summoned to appear personally in  
this court at [*place where court holden*] on              the  
day of              187      , at the hour of  
in the              , to be examined on oath by the court touching  
the means you have or have had since the date of the judg-  
ment [*or order*] to pay the said sum, in payment of which you  
have made default; and also to show cause why you should  
not be committed to prison for such default.

Dated this              day of              187      .

Registrar of the Court.

£ s. d.

Amount of judgment or order remaining due...

Costs of this summons ...      ...      ...      ...

Total sum due      ...      ...      ...

## 236. (See p. 242.)

AFFIDAVIT WHERE JUDGMENT SUMMONS IS SOUGHT ON AN  
ORDER OF A COURT NOT A COUNTY COURT.

The Debtors Act, 1869.

In the County Court of              holden at

In the matter of a judgment [*or order, or decree*] of the  
division of the High Court of Justice [*or as**the case may be*].

A.B., Plaintiff,

[*Address, description,*]

and

C.D., Defendant.

[*Address, description.*]

I, A.B., the above-mentioned plaintiff, make oath and say :

1. That on the              day of              18      , I obtained

a judgment [or order] in [here set forth the style of the court in which judgment, decree, or order obtained] against C.D., the above-named defendant, for the payment of the sum of

2. That there is still due on the said judgment [or order] the sum of

Sworn at, &c.

A.B.

### 237. (See p. 244.)

#### ORDER OF COMMITMENT ON AN ORDER OR JUDGMENT OF A COURT OTHER THAN A COUNTY COURT.

The Debtors Act, 1869.

In the [title of court ordering committal].

No. of Plaintiff.

No. of Judgment summons.

No. of Order.

Between A.B., Plaintiff,

and

C.D., Defendant.

To the High Bailiff and others the Bailiffs of the said Court, and all Peace Officers within the jurisdiction of the said Court, to the Governor or Keeper of the [prison used by the court].

Whereas the plaintiff obtained a judgment [or order] against the defendant in the division of Her Majesty's High Court of Justice [or as the case may be] on the day of , for the sum of £ , and there is now due and payable upon the said judgment the sum of :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to appear personally at this court on the day of 187 , to be examined on oath touching the means he had then or had had since the date of the judgment [or order] to pay the said sum, which summons was proved to this court to have been personally and duly served on the defendant.

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court that the defendant now has [or has had] since the date of the judgment [or order], the means to pay the sum in respect of which he made default as aforesaid, and has refused [or neglected], [or then refused or neglected] to pay the same.

Now therefore it is ordered, that the defendant shall be committed to prison for days, unless he shall sooner pay the sums, in payment of which he has so made default, together with the prescribed costs hereinafter mentioned, or shall file such affidavit as is mentioned in order xix., rule 20, of the County Court Rules, 1875.

These are therefore to require you the said high bailiff, bailiffs, and others, to take the defendant, and to deliver him to the governor or keeper of the [*prison used by the court*], and you the said governor or keeper to receive the defendant, and him safely keep in the said prison for                      days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of                      this [*insert date of order*] day of                      187 .

E.F.,  
Registrar of the Court.

£   s.   d.

|                                                                          |       |
|--------------------------------------------------------------------------|-------|
| Amount of judgment or order remaining due ...                            | _____ |
| Costs of judgment summons and poundage on this order ... ..              | _____ |
| Amount upon the payment of which the prisoner is to be discharged ... .. | _____ |

This order *remains in force one year from the date hereof.*

### 238. (*See p. 247.*)

#### AFFIDAVIT.

The Debtors Act, 1869.

In the County Court of .  
holden at

Between A.B., Plaintiff,  
and  
C.D., Defendant.

I, C.D., of                      make oath  
and say,—

1. That under the Debtors Act, 1869, an order for my committal was made by the above court [*or the county court of* holden at                      ], for making default in payment of £                      , due from me in pursuance of an order [*or judgment*] of the [*here insert the court in which order or judgment was given*].

2. That on the                      day of                      18                      , I was adjudicated a bankrupt by the [*here insert the court by which adjudication was made*].

3. That the order of adjudication was published in the "London Gazette" on the                      day of                      18                      .

4. That the debt, in respect of which the above order [*or judgment*] was given, was provable under the bankruptcy.  
[*or*

2. That my affairs are in course of liquidation [*or have been liquidated*] by arrangement under section 125 of the Bankruptcy Act, 1869, and that the debt in respect of which the above order [*or judgment*] was given was included in the statement produced to the meeting of my creditors.

*or*, 2. That I have entered into a composition with my creditors under the provisions of section 125 of the Bank-



ruptcy Act, 1869, and that the debt in respect of which the above order [*or judgment*] was given was inserted in the statement produced to the meetings of my creditors].

3. That the special resolution mentioned in section 125 of the Bankruptcy Act, 1869 [*or the extraordinary resolution mentioned in section 126 of the Bankruptcy Act, 1869*], was filed in the [*here insert name of court*] on the                      day of                      ].

Sworn at

C.D.

### 239. (*See p. 247.*)

#### CERTIFICATE BY REGISTRAR OF BANKRUPTCY OF JUDGMENT-DEBTOR.

The Debtors Act, 1869.

In the County Court of  
holden at

Between A.B., Plaintiff,  
and  
C.D., Defendant.

I hereby certify that the defendant who was committed to your custody by virtue of an order of commitment under the seal of this court [*or the county court of*                      holden at                      ], bearing date the                      day of                      187                      , has filed an affidavit in this court, stating that he is a bankrupt [*or has had his affairs liquidated by arrangement, or has entered into a composition with his creditors*]; and that the defendant may, in respect of such order, be forthwith discharged out of your custody.

Given under the seal of the Court this                      day of                      187                      .

Registrar.

To the Governor or Keeper.

### 240. (*See p. 39.*)

#### NOTICE TO A RESPONDENT UNDER THE AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1875.

In the County Court of                      holden at  
The Agricultural Holdings (England) Act, 187                      .  
Between A.B., Appellant,  
and  
C.D., Respondent.

Take notice that you are required within eight days of the delivery of this notice to you, to file in court a statement, signed by you or your solicitor, in reply to the grounds of appeal sent herewith, and that your statement must disclose the following matters:

1. Whether you dispute the validity in law of all or any and which of the grounds of objection to the award:

2. Whether you dispute the truth in fact of all or any and which of the grounds of appeal :
  3. Whether you admit the validity in law and truth in fact of all or any and which of the grounds of appeal :
  4. Whether you pray that the case may be remitted to be reheard.
  5. Your name and address, and that of your solicitor, if the statement be delivered through a solicitor.
- Dated this                      of                      187 .

Registrar of the Court.

To the above-named Respondent.

241. (See p. 39.)

In the County Court of                      holden at  
 In the Matter of the County Courts Acts, and  
 In the Matter of the Agricultural Holdings (England)  
 Act, 1875, and  
 In the Matter of an appeal by A.B.

The                      day of                      187 .

Upon the hearing this day of an appeal by [*name and description of appellant*] against an award dated [*state date*] given under the hand of [*referee's name*] whereby [*state shortly the substance of the award*], and on reading the said award, and on hearing the said A.B., and C.D., the respondent, Order xxxiv., rule 3.

It is ordered that [*state order, e.g. :—*] the said C.D. do within fourteen days of the date of this order pay to the said A.B. the sum of £                      and £                      for costs, and in default of such payments at the time aforesaid the said A.B. may proceed to execution.

242. (See p. 35.)

UNDERTAKING IN WRITING BY DEFENDANT TO PERFORM  
 CONTRACT.

Employers and Workmen Act, 1875.

In the County Court of                      holden at

(Seal.)

Between A.B., Plaintiff,  
 and  
 C.D., Defendant.

Whereas it has been found by this court on the                      day of                      18 , that the defendant had broken the contract for the breach of which he was summoned :

And whereas the court would have awarded to the plaintiff the sum of £                      by way of damages suffered by him in consequence of such breach, and would have ordered him to have paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed :

Now therefore I the undersigned defendant, and we the



at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the county court ordinarily sits, add, and I undertake to hire the use of the said building at my expense, to be allowed as costs in the suit if the court shall allow thereof].

Dated this                      day of                      18 .

[To be signed by the party, his solicitor,  
or his clerk for him.]

245.

# SUMMONS.

## Admiralty Jurisdiction.

In the County Court of                      holden at

(Seal.)

Whereas an action for [state the nature of the action] has been instituted in this court, on behalf of A.B., of , against the owner or owners unknown of the [state description of vessel], called the [name of vessel], (whereof C.D. is now or lately was master), [where action is against owner or owners unknown of vessel and freight, add, and the freight due for the transportation of the cargo now or lately laden therein; or where the action is against the owner or owners unknown of vessel, cargo, and freight, add instead thereof, and the cargo now or lately laden therein, together with the freight due for the transportation thereof], in the sum of [state sum in letters] pounds.

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.

Dated this                      day of                      18 .

Registrar of the Court.

To the owner or owners of the [state description and name of vessel], and all persons who have or claim to have any right, title, or interest in the said vessel.

N.B.—The solicitor for A.B. is                      of [here state the address given in the *præcipe*].

246.

# SUMMONS.

## Admiralty Jurisdiction.

In the County Court of                      holden at

A.B., Plaintiff [Address and description].

C.D., Defendant [Address and description].

(Seal.)

Whereas an action for [state nature of suit] has been insti-

tuted in this court on behalf of the plaintiff against you in the sum of [*state sum in letters*] pounds.

You are hereby summoned to enter an appearance in the said action, within four clear days of the service hereof.

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.

Dated and sealed this                      day of                      18 .

Registrar of the Court.

To the Defendant.

N.B.—The solicitor for the Plaintiff is                      of  
[*here state the address given in the præcipe*].

247.

#### WARRANT OF ARREST AND DETENTION.

##### Admiralty Jurisdiction.

In the County Court of                      holden at                      (Seal.)

[*Title of Action.*]

Whereas an action has been instituted in this court on behalf of A.B., of                      against the owner or owners of [*state description and name of vessel or property*] in the sum of [*state sum in letters*] pounds. These are therefore to require and order you to arrest the said                      and to keep the same under safe arrest until you shall receive further orders from this court.

Given under the seal of the Court this                      day of  
18 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

248.

#### BAIL BOND.

##### Admiralty Jurisdiction.

In the County Court of                      holden at                     

[*Title of Action.*]

Whereas an action for                      has been instituted in this court on behalf of A.B., of                      , against                      :

Now therefore we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of the said court, and consent that if he [*or they*] the said                      shall not pay what may be adjudged against

him [or them] in the said action, with costs, execution may issue forth against us, our heirs, executors, and administrators, our goods and chattels, for a sum not exceeding [*state sum in letters*] pounds.

[*Signatures of Sureties.*]

The bail bond was signed by the said \_\_\_\_\_, and  
the sureties, the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
Before me,

Registrar of the Court,  
or one of his clerks.

249.

#### ORDER OF RELEASE.

##### Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
[*Title of Action.*] (Seal.)

You are hereby authorised and directed to release the  
now under arrest of this court by virtue of its  
warrant, upon the payment of all costs, charges, and expenses  
attending the custody thereof.

Given under the seal of the Court this \_\_\_\_\_ day of  
18 \_\_\_\_

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

250.

#### PRÆCIPUE TO ENTER AN APPEARANCE.

##### Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
[*Title of Action.*]

I, R.S., solicitor, hereby enter an appearance on behalf [*state name, address, and description of party*] in the action for [*state nature of action*] which has been instituted in this court on behalf of [*state name, address, and description of plaintiff*] against [*state against whom the action is instituted*]. And I consent that all instruments and documents in the action may be left for me at [*state address*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
[*To be signed by the defendant, his solicitor, or his clerk for him.*]

251.

#### NOTICE OF HEARING.

##### Admiralty Jurisdiction.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
[*Title of Action.*] (Seal.)

Take notice that this action will be heard at a court to be  
holden on the \_\_\_\_\_ day of \_\_\_\_\_ at [*here state*]

where court is to be held], at the hour of                      o'clock in  
the                      noon.

Dated and sealed this                      day of                      18 .

Registrar of the Court.

To the Plaintiff and Defendant.

252.

# ORDER OF TRANSFER TO HIGH COURT OF JUSTICE.

## Admiralty Jurisdiction.

In the County Court of                      holden at  
[Title of Action.]                      (Seal.)

Whereas it appears that the subject of this action exceeds the limit in respect of amount of the Admiralty jurisdiction of this court [or state otherwise as the case may be], it is ordered that this suit be transferred to the Probate, Divorce, and Admiralty division of the High Court of Justice, together with the proceedings that have been had therein in this court.

Given under the seal of the Court this                      day of  
18 .

By the Court,

Registrar of the Court.

253.

# ORDER OF TRANSFER TO COUNTY COURT OR THE HIGH COURT OF JUSTICE.

## Admiralty Jurisdiction.

In the County Court of                      holden at  
[Title of Action.]                      (Seal.)

Whereas it hath been made to appear that the action could be more conveniently prosecuted in the county court of                      holden at                      , appointed to have Admiralty jurisdiction [or in the High Court of Justice], it is ordered that this action be transferred to the said court, together with the proceedings that have been had therein in this court.

Given under the seal of the Court this                      day of  
18 .

By the Court,

Registrar of the Court.

254.

# JUDGMENT OR ORDER.

## Admiralty Jurisdiction.

In the County Court of                      holden at  
[Title of Action.]                      (Seal.)

It is this day adjudged that the plaintiff A.B., of



do recover against the defendant [*or defendants*] C.D., of the sum of £ [*in an action for salvage, for services rendered to the above vessel; or in an action for towage, for services rendered in towing the said vessel; or in an action for necessities, for necessities supplied to the said vessel; or in an action for wages, for wages in respect of services rendered on board the said vessel; or in an action for damage to cargo, for damage caused to the cargo carried in the said vessel; or in an action for damage by collision, for damage caused to the said vessel by the defendant's vessel the [the description and name of the vessel which caused the damage], together with the costs of this action.*

And it is ordered that the defendant [*or defendants*] do pay the same to the plaintiff or his solicitor within days, [*add where the name of the defendant is known, and that in default thereof the registrar shall upon the application of the plaintiff or his solicitor issue a warrant of execution against the vessel or property of the defendant*].

Given under the seal of this Court this day of 18 .

By the Court,

Registrar of the Court.

## 255.

### PRÆCIPUE FOR A WARRANT OF EXECUTION.

#### Admiralty Jurisdiction.

(Seal.)

In the County Court of holden at  
[Title of Action.]

I, S.R., solicitor, do require a warrant of execution to issue against the goods of C.D., of , who was ordered by this court, on the day of 18 , to pay to the plaintiff or myself, as his solicitor, the sum of £ for [*here insert for what the sum was ordered to be paid*], and who has not paid the said sum as so ordered.

Dated the day of 18 .

[Signature of Solicitor.]

## 256.

### WARRANT OF EXECUTION AGAINST THE VESSEL OR PROPERTY OF DEFENDANT.

#### Admiralty Jurisdiction.

In the County Court of holden at  
[Title of Action.] (Seal.)

Whereas on the day of 18 , the plaintiff obtained a judgment in this court against the defendant for the sum of £ for and costs; and it was

thereupon ordered by the court that the defendant should pay the same to the plaintiff on the                      day of                      .

And whereas default has been made in payment according to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5*l.*), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this                      day of  
18                      .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,  
and others the Bailiffs thereof.

## 257.

### ORDER FOR TRANSFER OF SALE TO HIGH COURT OF JUSTICE.

#### Admiralty Jurisdiction.

In the County Court of                      holden at                     

(Seal.)

[*Title of Action.*]

Whereas in an action instituted in this court on behalf of *A.B.*, of                      against [*state name of defendant*], the judge of this court has ordered [*here insert the terms of the decree or order*]. And whereas the plaintiff [*or defendant*] in the said suit is desirous that the sale of the vessel should be conducted in the Probate, Divorce, and Admiralty division of the High Court of Justice, and has given security for the sum of 10*l.* Now I, *A.B.*, solicitor, pray that an order to transfer the proceedings for sale to the said division of the High Court of Justice do issue.

Dated the                      day of                      18                      .

Signature of Solicitor.

I hereby certify that the security above mentioned has been duly completed.

Registrar of the Court.

I hereby order the transfer to be made as prayed.

Judge of the Court.

258.

## PRÆCIPUE FOR PAYING IN MONEY.

## Admiralty Jurisdiction.

[Title of Action.]

In the County Court of                      holden at  
 I, A.B., of                      do pay the sum of [state sum in letters]  
 pounds into court in this action at the request and by the  
 authority of                      , he having agreed to pay [or tender]  
 the same in settlement of the claim of the plaintiff [or as the  
 case may be].

Dated the                      day of                      18                      .

[To be signed by the party, his solicitor,  
 or his clerk for him.]

259.

## SUMMONS TO ASSESSORS.

## Admiralty Jurisdiction.

(Seal.)

In the County Court of                      holden at

[Title of Action.]

You are hereby summoned to appear and serve as an  
 assessor in this court at the                      on the                      day of  
                     18                      , at the hour of                      in the                      noon, to  
 assist the judge of this court in the hearing and determining  
 of this suit, and in default of attendance you will be liable to  
 a penalty of a sum not exceeding 5*l.* under section 15 of the  
 County Courts Admiralty Jurisdiction Act, 1868.

Dated this                      day of                      18                      .

Registrar of the Court.

To  
 of

260.

## ORDER FINING AN ASSESSOR FOR NON-ATTENDANCE.

## Admiralty Jurisdiction.

In the County Court of                      holden at

(Seal.)

[Title of Action.]

Whereas                      was duly summoned to appear and serve  
 as an assessor at a court holden at                      on the  
 day of                      18                      , and whereas he has neglected, with-  
 out sufficient cause shown, to appear and serve as required :  
 it is hereby ordered that he shall forthwith [or on the  
 day of                      18                      ] pay to the registrar of this court a  
 fine of £                      for such neglect.

Given under the seal of the Court this                      day of  
 18                      .

By the Court,

Registrar of the Court.

261.

## ADMIRALTY ACTIONS-BOOK.

*Pro forma.*

| DATE. |        |       |                                                                                                                                                                                                                                                                               |
|-------|--------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Day.  | Month. | Year. |                                                                                                                                                                                                                                                                               |
| 10    | Feb.   | 1869  | Action for damage by collision, instituted on behalf of A.B., of<br>against the owner or<br>owners, unknown, of a schooner<br>named "The Kate," lying at<br>within the district of the court,<br>in the sum of 200 <i>l</i> .<br>Solicitor for the Plaintiff,<br>Mr. L.M., of |
| 10    | Feb.   | 1869  | Application made for arrest; affi-<br>davit filed; warrant issued, the<br>evidence being satisfactory.                                                                                                                                                                        |
| 11    | Feb.   | 1869  | Application for judge's permission<br>for suit to be heard at                                                                                                                                                                                                                 |
| 13    | Feb.   | 1869  | Permission granted.                                                                                                                                                                                                                                                           |
| 15    | Feb.   | 1869  | Appearance entered by C.D., of<br><br>Solicitor for Defendant, R.S., of                                                                                                                                                                                                       |
| 18    | Feb.   | 1869  | The action having been heard, the<br>court decreed that [ <i>here set forth<br/>the decree</i> ]. <i>If any further pro-<br/>ceedings had, they should be en-<br/>tered in the same manner.</i>                                                                               |

## APPENDIX F.

### FORMS NOT IN COUNTY COURT FORMS.

#### 1. (See p. 81.)

##### AFFIDAVIT IN SUPPORT OF MOTION FOR A PROHIBITION.

In the High Court of Justice,  
Division.

I, A.B., of                      make oath and say as follows:—

1. I was on the              day of              served with a summons issued by the county court of              holden at              commanding me to appear at the said court on the              day of              . A true copy of the said summons is now produced and shown to me, and is hereunto annexed and marked A. [*Annex a copy marked A.*]

2. A document, which I believe to be a copy of the plaintiff's particulars of demand, was annexed to the said summons. A true copy of the said document is now produced and shown to me, and is hereunto annexed and marked B. [*Annex a copy marked B.*]

3. I appeared at the said court, in obedience to the said summons, on the said              day of              and on the cause being called on objected to the jurisdiction of the said court, on the ground that the particulars of demand in the action disclosed a claim for damages for malicious prosecution not within the jurisdiction of the court.

4. The judge overruled my objection and proceeded to hear the evidence on behalf of the plaintiff, and at the end of the plaintiff's case I declined to call any witnesses, or to give evidence, and the judge gave a verdict for the plaintiff for 25*l.*

5. No application was made by the plaintiff for the amendment of his particulars of demand, and no amendment was, I believe, made by the judge.

2. (*See p. 110.*)

## NOTICE OF ACTION.

To A.B. and C.D., High Bailiffs of the County Court of Middlesex, holden at Whitechapel.

I hereby give you notice that it is my intention, at the end of one calendar month from the date hereof, to commence an action against you in the Exchequer division of the High Court of Justice, at Westminster [*or in the county court of Middlesex, holden at Westminster*], to recover compensation in damages for a trespass and excessive levy committed by you and your officers on the                      day of                      by selling and disposing of certain goods and chattels (belonging to me) in and upon the premises, 80, Derbyshire Street, Bethnal Green, in the county of Middlesex, to satisfy the sum of 1*l.* 6*s.* 6*d.*, and expenses under a judgment recovered against me at the suit of E.F., in the county court of Middlesex, holden at Shoreditch, on the                      day of                      .

Dated this                      day of                      . (a).

G.H.

(a) This form is almost verbatim the notice given in *Burton v. Le Gros*, 34 L.J.Q.B. 91, and it was there held sufficient in an action for selling before the expiration of the five days.

3. (*See p. 145.*)

## NOTICE OF THE ACCEPTANCE OF MONEY PAID INTO COURT IN SATISFACTION OF CLAIM.

[*Commence with Form 1, p. 559.*]

Take notice that the plaintiff accepts the sum paid into court by the defendant in full satisfaction and discharge of his claim in this action against the defendant.

To the Defendant                      (Signed)  
and the Registrar of the Court.                      Plaintiff [*or 's Solicitor*].

4. (*See p. 131.*)

## NOTICE OF ABANDONMENT OF ACTION.

[*Commence with Form 1, p. 559.*]

Take notice that the plaintiff does not intend to proceed with, and abandons, this action, fixed for hearing on the                      day of                      next.

To the Defendant                      (Signed)  
and the Registrar of the Court.                      Plaintiff [*or 's Solicitor*].

5. (*See p. 202.*)

## STATEMENT OF DISSATISFACTION.

[*Commence with Form 1.*]

I, C.D., the above-named defendant [*or plaintiff*] hereby give you notice that I am dissatisfied with the ruling of the

judge upon the hearing of this cause, that there was [or no] evidence of a memorandum in writing to satisfy the provisions of the 17th section of the Statute of Frauds, and that I intend to appeal against such ruling upon the ground above stated to the divisional court of the High Court of Justice appointed for the determination of appeals from inferior courts.

Dated, &c.

(Signed)

The above-named Defendant [or Plaintiff].  
Or Counsel, or Solicitor for the above-named  
Defendant [or Plaintiff].

To the Registrar of the said Court.

This form may be varied to suit the circumstances of the case. The following variations are given as precedents :

With the direction of the judge to the jury upon the hearing of this cause that there was no evidence of a rescission of the contract relied on by the plaintiff.

With the determination of the judge upon the hearing of this cause in admitting [or refusing to admit] in evidence an unstamped document tendered by the plaintiff [or defendant], and that I intend to appeal against such determination to the divisional court of the High Court of Justice appointed for the determination of appeals from inferior courts upon the ground that the said document being [or not being] an agreement for required [or did not require] a stamp under the existing stamp laws.

## 6. (See p. 203.)

### NOTICE OF APPEAL.

[Commence with Form 1.]

I, C.D., the above-named defendant [or plaintiff], being dissatisfied with the determination [or direction] of this court in point of law [or by the admission, or rejection of evidence] upon the trial of this cause on the       day of       hereby give you, the above-named plaintiff [or defendant], and also the registrar of the said court, notice that it is my intention to appeal from the same to the divisional court of the High Court of Justice appointed for the determination of appeals from inferior courts according to the provisions of the statutes in that behalf.

The following are the grounds of appeal. [State the grounds, and see the last preceding form.]

(Signed)

The above-named Defendant [or Plaintiff].  
Or Solicitor, or Agent for the above-named  
Defendant [or Plaintiff].

To the above-named Plaintiff [or Defendant],  
and to the Registrar of the said Court.





9. (*See p. 246.*)

CERTIFICATE OF PAYMENT BY A PRISONER.

The Debtors Act, 1869.

I hereby certify that the defendant who was committed to my [*or your*] custody by virtue of an order of commitment under the seal of this court [*or of the county court of* holden at ], bearing date the day of , 187 , has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; and that the defendant may, in respect of such order, be forthwith discharged out of my [*or your*] custody.

Given under my hand [*or the seal of the Court*], this day of 187 .

Gaoler [*or Registrar of the County Court of* , holden at ].

To the Governor or Keeper of

10. (*See p. 268.*)

AFFIDAVIT FOR LEAVE TO DEFEND UNDER BILLS OF EXCHANGE ACT.

[*Commence with Form 2, p. 559.*]

I, A.B., of make oath and say as follows:

1. I was on the day of served with the summons herein issued out of this court, a true copy whereof is now produced and shown to me, and is hereunto annexed and marked A.

2. Annexed to the said summons was a copy of the plaintiff's particulars of demand in this action, and a copy of the same is now produced and shown to me, and is hereunto annexed and marked B.

3. The bill of exchange upon which this action is brought was drawn by the plaintiff upon and was accepted by me, and a true copy of the said bill appears in the said particulars of demand.

4. The said bill of exchange was accepted by me exclusively for the accommodation of the plaintiff, at his request, and no consideration whatever existed or exists for my acceptance of the said bill.

5. I am advised and believe that I have a good defence to this action upon the merits.

11. (*See p. 268.*)

NOTICE OF LEAVE GIVEN TO DEFEND.

[18 & 19 Vict. c. 67.]

Take notice that the defendant has obtained leave to appear at a county court to be holden at on the

day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
to defend this action.

The defendant has obtained such leave on the ground set forth in an affidavit, a copy of which is hereunto annexed [and has paid to me the sum claimed by you to abide the decision of the court] [or has given security for the amount claimed by you, and the costs of this action].

12. (*See p. 299.*)

ORDER OF TRANSFER OF ACTION OR MATTER TO CHANCERY  
DIVISION OF HIGH COURT.

Whereas it appearing that the subject-matter of this suit exceeds in amount the sum of 500*l.*, it is ordered that this suit [or matter] be transferred to the Chancery division of the High Court of Justice, together with the annexed certificate of the registrar of this court, showing the state of the suit [or matter] and the proceedings that have been had therein in this court.

By the Court,

Registrar.

## APPENDIX G.

### RULES, ORDERS, AND FORMS UNDER THE PROBATE ACTS. (*See ante*, p. 28.)

1. Any person desirous of taking proceedings in any county court under the statute 20 & 21 Vict. c. 77, for amending the law relating to probates and letters of administration in England, shall lodge with the registrar of the court having jurisdiction in the matter, an application in writing according to Form A annexed, duly stamped with the proper duty thereon (a), and at the same time lodge with the registrar an office copy of the minute of the court of probate, authorising such application.

Commence-  
ment of pro-  
ceedings.

2. Where any person shall have lodged a caveat against the grant of probate or letters of administration, and proceedings are proposed to be taken in a county court, the person who shall have applied for the probate or letters of administration shall be deemed the plaintiff in the proceedings, and the person who shall have lodged the caveat shall be deemed the defendant.

Plaintiff  
and defen-  
dant, where  
caveat is  
lodged.

3. The party making application to a county court for the grant or revocation of probate or letters of administration shall be deemed the plaintiff in the proceedings, and the party against whom the application is made shall be deemed the defendant.

Plaintiff  
and de-  
fendant on  
application  
for grant or  
revocation  
of probate  
or letters of  
administra-  
tion.

4. Where an application shall be made to a county court for the grant or revocation of probate or letters of administration the registrar shall issue a notice to the defendant, according to Form B annexed, and deliver a notice according to such form, then and there, to the plaintiff or his agent.

Notice to  
plaintiff and  
defendant.

5. The above-mentioned notices shall be issued ten clear days before the day on which the judge shall proceed to make a decree in the matter.

Notices,  
when to be  
issued.

6. Notices shall be served by a bailiff of the court by his delivering the same to some person at the respective places of

Service of  
notices.

(a) The stamps to be used in the county courts under the Act 20 & 21 Vict. c. 77, can be had of the different local distributors of stamps.

residence of the parties as mentioned in the application for proceedings to be taken.

Notice to district registrar to produce original will, &c.

7. The registrar of the county court, at the time that he issues the notices in proceedings for the revocation of the grant of probate or letters of administration, shall give notice by post, according to Form C annexed, to the district registrar, by whom the probate or letters of administration has been granted, to produce the original will or other necessary documents at the county court at which the matter of the application will be considered.

Certificate under sect. 55.

8. The certificate to be given by the registrar of a county court, under section 55 of 20 & 21 Vict. c. 77, shall be according to Form D annexed; and, on or before the day mentioned in the notice, the plaintiff shall deliver to the registrar such form stamped with the proper duty thereon, and the cause shall not proceed until such form duly stamped is so delivered: provided that the defendant may procure and deliver such form duly stamped if the plaintiff shall have neglected to deliver such form so stamped.

Hearing and decrec.

9. Upon the day mentioned in the notice the judge, whether both parties are before him or not, may proceed to consider of the application and to make a decree thereon, or he may adjourn the proceedings from time to time as he may think fit.

Sending copy of decree.

10. The decree shall be according to Form E annexed, and a copy of such decree shall be sent by post to the plaintiff and defendant.

Notice where cause is sent down by court of probate.

11. Where application for probate or letters of administration has been made at the principal registry, and any contentious matter shall arise out of such application, and the judge of the court of probate shall send the cause to a county court, the registrar, upon the receipt of such cause, shall forthwith issue a notice, according to Form B in the schedule, both to the plaintiff and defendant, without any application being made to the court by the plaintiff.

Procedure where rules not provided.

12. In proceedings for which rules and orders are not hereby provided, the rules and practice of the court of probate shall be followed so far as they are applicable (b).

General procedure.

13. The enactments, practice, and forms in force, and used in the county courts, shall, subject to the foregoing rules and orders, be adopted with reference to proceedings in the county courts, in matters of probate or letters of administration, as far as the same are applicable *mutatis mutandis*.

I approve of the above to come in force on the 4th day of February, 1858.

CRANWORTH, C.

(b) The rules and orders of the court of probate, relating to contentious business, follow p. 572, *et seq.*

# FORMS.

[Which are to be followed as nearly as the circumstances of each case will allow.]

[Stamp, 16s. 8d.]

## FORM A.

Application to a county court for proceedings to be taken under the Act (20 & 21 Vict. c. 77) for amending the law relating to probates and letters of administration in England.

I, *A.B.*, of [or *C.D.*, proctor, solicitor, or attorney of *A.B.*, of ] do hereby apply to the judge of the above court for a decree to be made by him according to the provisions of the above Act, for the grant [or revocation] of probate of the will [or letters of administration in the goods] of [here insert name and address of testator or intestate]; and I hereby state that the person who has applied for probate or letters of administration [or who has obtained probate or letters of administration, or is the party against whom this application is made], is *E.F.*, of .

*A.B.* [or *C.D.*, proctor, solicitor, or attorney of *A.B.*] of .

## FORM B.

(Seal.)

In the County Court of . holden at  
Between *A.B.*, Plaintiff,  
[Address,]  
and  
*C.D.*, Defendant.  
[Address.]

Take notice that at a county court to be holden at  
on the . day of . at the . hour of  
in the . noon, the judge of this court will  
proceed to make a decree for the grant [or revocation] of probate of the will [or letters of administration in the goods] of [here insert name and address of testator or intestate], unless cause be then shown to the contrary; and you are hereby informed that if you do not attend on that day, the judge may proceed to make such decree in your absence.

Dated this . day of . 18 .

Registrar of the Court.

To the Plaintiff [or Defendant].

Hours of attendance at the office of the registrar [place of office], from ten till four, except on ., when the office will be closed at one.

## FORM C.

(Seal.)

In the County Court of                      holden at  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

Whereas an application has been made to this court to revoke the grant of probate of the will [or letters of administration granted by you in the goods] of *[here insert name and address of the testator or intestate]*; and whereas the matter of such application will be considered by the judge of this court on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, I therefore request that you will cause to be produced before the judge on that day [the will (a) and] all documents which are in your possession relating to the matter.

Dated this                      day of                      18   .

Registrar of the Court.

Hours of attendance at the office of the registrar [*place of office*], from ten till four, except on \_\_\_\_\_, when the office will be closed at one.

(a) To be left out where administration without will annexed has been granted.

## FORM D.

CERTIFICATE OF A REGISTRAR OF A COUNTY COURT UNDER  
SECTION 55 OF 20 & 21 VICT. C. 77.

(Seal.)

In the County Court of                      holden at  
Between A.B., Plaintiff,  
[Address,]  
and  
C.D., Defendant.  
[Address.]

I, A.B., registrar of the above court, do hereby certify that the following decree was made in the above cause:

[Here set out the decree.]

Certified under the seal of the Court this                      day of  
18 .

Registrar of the Court.

## FORM E.

(Seal.)

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

Upon the hearing of the application in this cause at a court holden this day it is decreed as follows:

[Here set out decree.]



and it is ordered that the \_\_\_\_\_ do pay the sum of \_\_\_\_\_  
for the \_\_\_\_\_'s costs, and that the same  
be paid to the registrar of this court on the \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_.

Given under the seal of the Court this                      day of  
18 .

By order of the Court,

Registrar.

Hours of attendance at the office of the registrar [place of office] from ten till four, except on \_\_\_\_\_, when the office will be closed at one.

[As the above forms will seldom be required, they are not to be printed, but are to be written on foolscap paper.]

### SCALE OF COSTS.

The same costs and charges are to be paid to counsel and attorney in the county courts under the provisions of section 33 of the Act 19 & 20 Vict. c. 108, as shall be paid to counsel, proctors, solicitors, and attorneys, in respect of proceedings in the county courts under the Acts 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, except that the fees to counsel and clerk may be a sum not exceeding 5*l.* 10*s.*

In pursuance of the powers vested in us by the Acts 19 & 20 Vict. c. 108, and 21 & 22 Vict. c. 95, we have framed the above, and we do hereby certify the same to the lord chancellor accordingly.

I approve of the above to come in force in all county courts  
on the 11th day of January, 1859.

CHELMSFORD, C.

3rd January, 1859.

## APPENDIX H.

### RULES, ORDERS, AND FORMS UNDER THE CHARITABLE TRUSTS ACT, 1853. (*See* *ante*, p. 28.)

March 6, 1854.

Record.

1. The clerk of every county court shall keep a book to be called "The Charitable Trusts Book," in which all proceedings taken in that court, in matters of charitable trusts, shall be recorded in the form in the schedule hereunto annexed.

Proceedings  
by private  
persons.

2. When any person has obtained the required order or certificate from the charity commissioners, and he is desirous of taking proceedings in the county court, he shall produce such order or certificate to the clerk, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed the plaintiff in such proceedings, and the person served with a summons under order iv. shall be deemed the defendant.

Proceedings  
by attorney-  
general.

3. When the attorney-general shall propose to take proceedings in the county court, he shall cause to be delivered or transmitted to the clerk a written statement showing the nature and object of the proposed proceedings, and the clerk shall retain and file such statement in numerical order in his office; and the attorney-general shall in such proceedings be deemed the plaintiff, and the person served with a summons under order iv. shall be deemed the defendant.

Summons.

4. Upon the production of any order, certificate, or statement hereinbefore mentioned, the clerk shall, at the instance of the plaintiff, prepare a summons thereon in the form set forth in the schedule hereunto annexed, in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff in writing to be summoned, and two additional copies, the one to be filed in the clerk's office, and the other to be transmitted to the charity commissioners.

5. The clerk, if required by the plaintiff, shall prepare a notice to attend proceedings in the form set forth in the said schedule, to be served on any persons indicated by the plaintiff in writing, besides those summoned under the last-preceding order, and the said clerk shall make as many copies thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the charity commissioners.

Notice to attend proceedings.

6. The clerk shall forthwith transmit, by prepaid post letter, a copy of the summons to each of the parties required to appear, and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service unless the judge shall in any case otherwise direct.

Service of summons and notice to attend proceedings (s. 32).

7. When the plaintiff does not require any summons or notice to attend proceedings to be issued, the clerk shall prepare a notice of hearing in the form set forth in the said schedule, and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the charity commissioners; and shall either deliver such notice to the plaintiff or cause it to be served on him, by prepaid post letter, unless the judge shall in any case otherwise direct.

Notice of hearing (s. 32).

8. In all cases it shall be competent for the clerk, if required by the plaintiff, to summon some persons, and to serve others with either or both of the said notices, or to serve a notice of hearing on the plaintiff, and a notice to attend proceedings on any other person.

Summons and notices to be issued in certain cases (s. 32).

9. In all cases it shall be competent for the judge to direct in any case what persons, or additional persons, shall be served with a summons, or notice to attend proceedings, or notice of hearing.

Judge's power (s. 32).

10. Upon the requisition of the charity commissioners, a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the commissioners, shall be transmitted under the seal of the court by the judge, to them at their office, by post or otherwise.

Judge's note in ordinary cases (s. 32).

11. Upon the requisition of the \_\_\_\_\_ in proceedings instituted by him, a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the attorney-general, shall be transmitted under the seal of the court to him, by post or otherwise.

Judge's note where attorney-general proceeds (s. 43).

12. A copy of the summons, notice to attend proceedings, notice to appear, together with a copy of the order made by the court, shall in all cases be transmitted by the clerk forthwith after the hearing by post, or otherwise, as the judge shall direct, to the office of the commissioners.

Copy of proceedings to be sent to commissioners (s. 33).

13. Where the annual income of the charity exceeds 10*l.*, the court fees shall be payable as in cases within the ordinary jurisdiction of the court, without prejudice to the privilege of the attorney-general as to costs, and the charitable funds may be made liable to the payment thereof at the discretion of the judge.

Fees where income of charity exceeds 10*l.* (s. 45).

- Fees where income does not exceed 10*l.* (s. 45). 14. Where the annual income of the charity does not exceed 10*l.* no fees of court shall be payable out of the funds of the charity, nor shall any fees be paid by any party to the proceedings, unless the judge shall in his discretion order any of the parties to the proceedings before him to pay such fees of court as he shall think fit, without prejudice to the privilege of the attorney-general as to costs.
- Fees where several charities join (s. 45). 15. Where more than one charity is joined in one application, one set of court fees only shall be payable, such fees to be calculated on the aggregate amount of the incomes of the charities so joining.
- Fees, how calculated (s. 45). 16. Where court fees are payable, they shall be calculated according to the scale of fees applicable to proceedings for the recovery of tenements under the 9 & 10 Vict. c. 95 (a), the annual income of the charity, like the annual rent of the tenant, being treated as the basis of calculation.
- Who may appear at hearing (s. 43). 17. At the hearing, any person who has been summoned, or has received notice to attend proceedings, or who is authorised to apply under section 43 of the Charitable Trusts Act, 1853, may appear, and shall be heard to oppose the application authorised by the order or certificate of the commissioners, or the statement of the attorney-general, subject to the payment of such costs as the judge shall direct.
- Effect of commissioner's order, or certificate, or attorney-general's statement (s. 44). 18. The order or certificate of the commissioners, or statement of the attorney-general as to the amount of the annual income, shall be conclusive on the court; and the other statements contained in the certificate or order of the commissioners, or the statement of the attorney-general, shall, unless disputed, be taken as true.
- Appeal (s. 39). 19. Where any person is desirous of appealing against an order made by the court in any matter of a charity, he shall, within one calendar month after making such order, give notice in writing stating the grounds of such intended appeal to the court, and such notice may be served by post or otherwise on the clerk of the said court at his office.
- Forms. 20. The forms contained in the schedule may be varied by the court according to the circumstances of each case.
- Practice to continue subject to these orders. 21. The enactments, secretary of state's orders, practice and forms in force, and used in the county courts, shall, subject to the foregoing orders, be adopted with reference to proceedings in matters of charitable trusts as far as the same are applicable, *mutatis mutandis*.
- Clerk's duties as to trustees' accounts (s. 61). 22. The accounts of trustees of charities, when delivered to the clerk of the county court, shall be filed by him in numerical order, and annually indexed alphabetically according to the titles of such charities or the names or description by which they are known or may be identified.

(a) See 19 & 20 Vict. c. 108, s. 50, and schedule C, *ante*, pp. 178, 205.

## SCHEDULE OF FORMS.

## 1.

## SUMMONS.

In the County Court of                      holden at  
(Seal.)

In the Matter of [*title of charity*].

No. of Charity.

[*Name, description, and address of party to be summoned.*]

You are hereby summoned to appear at a county court to be holden at                      on the                      day of 18                      , at the hour of                      in the forenoon, upon the hearing of an application which had been made to the court in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*]. And you are informed that if you do not attend pursuant to the requisition of this summons, the court may proceed in the matter in your absence, and make such order as may appear just therein. And you are further informed, that if you do not obey such order you will be liable to be imprisoned by order of the court.

A.B., Clerk of the Court.

Dated this                      day of                      18                      .

## 2.

## NOTICE TO ATTEND PROCEEDINGS.

In the County Court of                      holden at  
(Seal.)

In the Matter of [*title of charity*].

No. of Charity.

[*Name, description, and address of party to whom notice is to be given.*]

Take notice, that the hearing of an application in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*], will take place on the                      day of                      18                      , at the above county court.

The object of this notice is, that if you are desirous of attending the said hearing you are at liberty to do so, and you may be heard in support of any objection you have to such proceedings in respect of the above charity.

But if you do not attend at the hearing you will not be subject to any costs or penalty in respect of such non-attendance.

A.B., Clerk of the Court.

Dated this                      day of                      18                      .

## 3.

## NOTICE OF HEARING.

In the County Court of \_\_\_\_\_ holden at  
(Seal.)

In the Matter of [title of charity].

No. of Charity.

[Name, description, and address of party to whom notice is to be given.]

Take notice, that the hearing of the application in the matter of the above charity is appointed to take place at this court on the \_\_\_\_\_ day of \_\_\_\_\_ 18 (a).

A.B., Clerk of the Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(a) This should be at the earliest convenient sitting of the court.

## 4.

## FORM OF RECORD.

Ashley, Lady, Charity of. In the Matter of.

No. 1.

On the \_\_\_\_\_ day of \_\_\_\_\_ 18 , an order [certificate, or statement, as the case may be] was produced by [state the party producing or transmitting it] and the same has been numbered 1 [or, as the case may be, according to the priority of production to the clerk].

On the \_\_\_\_\_ day of \_\_\_\_\_ 18 , a summons [or other process, as the case may be] was issued and directed to be served by post [or otherwise, as the case may be] on [state the parties], requiring him [her or them, as the case may be], to appear at this court on the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

At a court holden on the \_\_\_\_\_ day of \_\_\_\_\_ 18 , appeared [state parties appearing, or reasons for not appearing, or whether they appear by counsel or otherwise. If any adjournment takes place, state the cause thereof, and adjournment, and until when adjourned; then on the adjournment day proceed in a similar manner as on the first day of hearing; and the same on every successive adjournment day. When the matter is finally disposed of, then proceed]:

The matter having been heard, the court made the following order [here state the order. If any other proceedings, whether before or after the final order, are taken in the matter, they must be recorded in a similar manner in their proper places. It will not be necessary to set forth on the record any of the evidence, as that will appear on the judge's notes; but any document produced, or any copy thereof, which the judge requires to be filed, should be filed along with the other papers relating to the matter].

[When the record of proceedings in any charity occupies more than one page, the record may be continued on the next blank page, and a reference should be made from such previous page to

such next page, and from such next page to such previous page. The book in which the record is kept should be paged throughout, and have an alphabetical index at the end. The names of the charities should be arranged in the index alphabetically, and the numbers of the pages in which any proceedings are recorded should be given at the end of the names.]

R. R.

## 5.

FORM OF ORDER FOR THE REMOVAL OR APPOINTMENT OF A  
TRUSTEE; VESTING THE ESTATES OF A CHARITY IN A  
TRUSTEE, AND APPROVING A SCHEME.

In the County Court of \_\_\_\_\_ holden at \_\_\_\_\_ (Seal.)

In the Matter of [title of charity].

No. of Charity.

Upon the application of [name, description, and address of applicant] to [here state the substance of the application authorised by the order or certificate; but in the case of a scheme, only refer to it as "a certain scheme for regulating or directing the administration of the said charity"] and upon hearing the matter of the said application,

It is ordered that [name, description, and address], one of [or the trustee] the trustees of the above charity be removed [or that (name, description, and address) be appointed a trustee of the said charity], [or that (name, description, and address) one of the trustees (or the trustee) of the said charity be removed, and that (name, description, and address) be appointed a trustee instead of the said (name of removed trustee)]: and it is further ordered that [state property and rights of the charity as described or indicated in the order or certificate] do vest in the said [names of trustees in whom the said property and rights are so vested]: and it is further ordered the scheme set forth in the schedule hereunto annexed for the regulating [or directing] the administration of the said charity to be appointed and established.

Given under the seal of the Court this                      day of  
18 .

By the Court,

A.B., Clerk of the Court.

Schedule referred to in the foregoing order :

[Here insert scheme approved of].

This is the schedule referred to in the above order.

[Clerk's signature].

*\*\* Where the application to the court does not embrace all the subjects of the above form, such part may be adopted as is applicable to the exigency of the case.*



## 6.

## FORM OF ORDER UNDER SECTION 48.

In the County Court of                      holden at  
(Seal.)

In the Matter of [*title of charity*].

No. of Charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the certificate*], and upon hearing the matter of the said application,

It is ordered that the [*here describe the estates of the charity as described or indicated in the order or certificate*] holden in trust for the above-mentioned charity do vest in "the treasurer of public charities" and his successors in trust for the said charity.

[*Where any periodical or other payment is directed with respect to any copyhold land, add as to a periodical payment the following clause*]. And it is further ordered, with the consent of the [*name, description, and address of the lord of the manor wherein the estates are situated*] that the sum of £                      be paid by [*name, description, and address of person ordered to pay*] to the said lord of the manor of                      on the day of                      next, and on the same day in each succeeding year [*as the case may be*], in compensation for fines or other forfeits which would have become due upon the death or admittance of the tenants of such lands, being part of the said manor holden upon trust for the said charity.

Given under the seal of the Court this                      day of  
18                      .

By the Court,

A.B., Clerk of the Court.

## 7.

## FORM OF ORDER UNDER SECTION 51.

In the County Court of                      holden at  
In the Matter of [*title of charity*].

No. of Charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate*], and upon hearing the matter of the said application,

It is ordered that [*name, description, and address*] [*where they are personal representatives insert "the executors (or administrators) of (name, description, and address) deceased"*] do transfer the £                      Bank 3l. per Centum Annuities, or Reduced Annuities [*or 3l. 5s. per Centum Annuities, or bank stock, promissory note, bill of exchange, bond, debenture, or other security, as the case may be*] standing in the name [*or names*]

[insert the names, descriptions, and addresses of the persons in whose names the stock is standing] into the names of [names of official trustees].

[Where securities are to be deposited, vary the preceding order, commencing with the words "do transfer," and substitute the following: "do deposit the following exchequer bills dated; (that is to say) No. 1836 for 500l., No. 772 for 50l., &c., or any other exchequer bills for which the same may be exchanged (as the case may be) with names of the official trustees].

Given under the seal of the Court this            day of  
18 .

By the Court,

A.B., Clerk of the Court.

### 8.

FORM OF ORDER FOR PAYMENT OF MONEY BY ANY TRUSTEE OF  
ANY CHARITY OR ANY PERSON HOLDING MONEY BELONGING  
TO ANY CHARITY.

In the County Court of            holden at  
(Seal.)

In the Matter of [title of charity].  
No. of Charity.

Upon the application of [name, description, and address of applicant] to [here state substance of the application authorised by the order or certificate], and upon hearing the matter of the said application,

It is ordered that [name, description, and address] do on or before the            day of            18 , pay the sum of  
£            [with interest thereon (if any)] to [state party or account].

Given under the seal of the Court this            day of  
18 .

By the Court,

A.B., Clerk of the Court.

### 9.

#### NOTICE OF APPEAL.

In the Matter of [name of charity].

I, [name, description, and address of the appellant] do hereby give notice that I am aggrieved by [or dissatisfied with] a certain order made by the county court of            holden at and dated the            day of            and that I intend to appeal against the same, and the grounds of the appeal are that [here state grounds].

(Signed)

[Appellant's name].

To the Clerk of the County Court of  
holden at  
Dated this            day of            18 .

## 10.

## NOTICE OF SURETIES.

In the County Court of                      holden at  
In the Matter of [*title of charity*].

Take notice that the sureties whom I propose as my sureties on the appeal in the above matter are [*here state the full names and additions of the sureties, whether housekeepers or freeholders, and their residences for the last six months, therein mentioned the county or city, places, street, and numbers, if any*].

## 11.

## FORM OF BOND.

Know all men by these presents, that we [*names, description, and addresses*], and [*names, descriptions, and addresses*] are jointly and severally bound to [*name, description, and addresses of obligee*] in £                      of good and lawful money of Great Britain, to be paid the said [*name of obligee*] or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each [*and every*] of us, in the whole, our and each of our heirs, executors, administrators, jointly and severally by these presents.

Sealed with our seals, and dated this                      day of  
18                      .

Whereas an order dated the                      day of                      18                      , was made in the matter of [*name*] charity by the county court of                      holden at                      and [*name, description, and address of appellant*] states himself to be aggrieved by [*or dissatisfied with*] the said order, and has given notice of appeal pursuant to the Charitable Trusts Act, 1853, and the practice of the court: and whereas the charitable commissioners of England and Wales have required that the said [*appellant*] should, together with two sufficient securities, become bound to [*person whom the commissioners direct to be obligee*] in the sum of £                      to pay such costs of the proceedings on the appeal as shall be ordered to be paid by the said appellant [*if required by the commissioners*], and also to indemnify the charity against the costs, expenses of, and attending such appeal.

And whereas the above-named [*names, descriptions, and addresses of sureties*], at the request of the said [*name of appellant*], have agreed to enter into the above-written obligation for the purpose aforesaid, and the security intended to be given has been approved of by [*name of clerk*].

I approve of  
this bond.  
I.K.  
(L.S.)

Now the condition of this obligation is such that if the above-bounden [*names*], and any or either of them shall pay unto the said [*name of the obligee*], his executors, administrators, or assigns, the costs of the said appeal as the said court of appeal shall order, then this obligation shall be void, otherwise to remain in full force and virtue.

A.B. (L.S.)

C.D. (L.S.)

E.F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

## APPENDIX I.

### COSTS AND FEES.

A SCALE OF COSTS AND CHARGES TO BE PAID TO SOLICITORS IN ACTIONS UNDER 20*l.*, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, ON AND AFTER NOVEMBER 2, 1875.

I.—*In actions where the amount recovered exceeds 40*s.* and does not exceed 5*l.**

|                                                                                                                                                                     | <i>s.</i> | <i>d.</i> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|
| 1. Instructions for and preparing particulars for an ordinary summons (such particulars to be signed by the solicitor), and attending and entering<br>plaint ... .. | 3         | 0         |
| 2. Attending or acting in court (9 & 10 Vict. c. 95,<br>s. 91) ... ..                                                                                               | 10        | 0         |

*For a default summons instead of item one.*

|                                                                                                                                                     |   |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| 3. Preparing affidavit, swearing, and filing, including notice of mode in which payment will be accepted                                            | 5 | 0 |
| 4. Copy and service of summons, if served by plaintiff's solicitor, or his clerk, within two miles of the place of business of the solicitor ... .. | 5 | 0 |
| If beyond that distance, additional for every mile, but not to exceed ten miles ... ..                                                              | 0 | 6 |
| 5. Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default ... ..                                  | 6 | 8 |

II.—*In actions where the amount recovered exceeds 5l. and does not exceed 10l.*

|                                                                                                                                                          | s. | d. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|
| 1. Letter before action ... ..                                                                                                                           | 3  | 4  |
| 2. Instructions for and preparing particulars for an ordinary summons, such particulars to be signed by the solicitor, and attending and entering plaint | 6  | 8  |
| 3. Attending or acting in court (9 & 10 Vict. c. 95, s. 91) ... ..                                                                                       | 15 | 0  |

*For a default summons instead of item 2.*

|                                                                                                                                                    |   |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| 4. Preparing affidavit, swearing, and filing, including notice of mode in which payment will be accepted                                           | 6 | 0 |
| 5. Copy and service of summons, if served by plaintiff's solicitor or his clerk, within two miles of the place of business of the solicitor ... .. | 5 | 0 |
| If beyond that distance, additional for every mile but not to exceed 10 miles ... ..                                                               | 0 | 6 |
| 6. Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default ... ..                                 | 6 | 8 |

III.—*In actions where the amount recovered exceeds 10l. and does not exceed 20l.*

|                                                                                                                                                           |    |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----|---|
| 1. Letter before action ... ..                                                                                                                            | 3  | 4 |
| 2. Instructions for and preparing particulars for an ordinary summons (such particulars to be signed by the solicitor), and attending and entering plaint | 6  | 8 |
| 3. Attending or acting in court (9 & 10 Vict. c. 91, s. 91) ... ..                                                                                        | 15 | 0 |
| 4. Taxing costs ... ..                                                                                                                                    | 5  | 0 |

*For a default summons instead of item 2.*

|                                                                                                                                                     |   |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| 5. Preparing, swearing, and filing affidavit, including notice of mode in which payment will be accepted                                            | 6 | 8 |
| 6. Copy and service of summons, if served by plaintiff's solicitor, or his clerk, within two miles of the place of business of the solicitor ... .. | 5 | 0 |
| If beyond that distance, additional for every mile but not to exceed 10 miles ... ..                                                                | 0 | 6 |
| 7. Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default ... ..                                  | 6 | 8 |

*Note.*—[The items of charge numbered 1 and 2, and 1, 2, and 3 in the above scales may be charged in the summons in the cases to which the charges respectively apply; where the amount claimed is larger than the amount recovered, the judge may certify for costs on the scale applicable to the amount claimed if he shall think fit.]

SCALES OF COSTS AND CHARGES TO BE PAID TO COUNSEL AND SOLICITORS IN ACTIONS ABOVE 20*l.*, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, ON AND AFTER NOVEMBER 2, 1875.

|                                                                                                                                                                                                                                | Lower Scale (a). |    |     | Higher Scale (a). |    |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----|-----|-------------------|----|----|
|                                                                                                                                                                                                                                | £                | s. | d.  | £                 | s. | d. |
| 1. Letter before action ... ..                                                                                                                                                                                                 | 0                | 3  | 6   | 0                 | 3  | 6  |
| 2. Instructions to sue or defend ... ..                                                                                                                                                                                        | 0                | 6  | 8   | 0                 | 13 | 4  |
| 3. Application for substituted service or service out of England ... ..                                                                                                                                                        | 0                | 4  | 0   | 0                 | 6  | 0  |
| Service, sum allowed by judge.                                                                                                                                                                                                 |                  |    |     |                   |    |    |
| 4. Perusing deeds and documents when long, not exceeding ... ..                                                                                                                                                                |                  |    | ... | 2                 | 2  | 0  |
| 5. Attendance and entering plaint, including particulars and copies, such particulars and copies being signed by the solicitor ... ..                                                                                          | 0                | 13 | 4   | 0                 | 13 | 4  |
| 6. Where special particulars are required under order viii., rule 7, then in addition to item 5 ... ..                                                                                                                         | 0                | 6  | 8   | 0                 | 13 | 4  |
| 7. Preparing affidavit and filing, including notice of mode in which payment will be accepted ... ..                                                                                                                           | 0                | 6  | 8   | 0                 | 6  | 8  |
| 8. Copy and service of summons, if served by solicitor, or his clerk, within two miles of the place of business of the solicitor ... ..                                                                                        | 0                | 5  | 0   | 0                 | 5  | 0  |
| If beyond that distance, additional for every mile, but not to exceed 10 miles ... ..                                                                                                                                          | 0                | 0  | 6   | 0                 | 0  | 6  |
| 9. Affidavit of service with copy of summons annexed ... ..                                                                                                                                                                    | 0                | 5  | 0   | 0                 | 5  | 0  |
| 10. Attending to file affidavit of service, including entering up judgment by default... ..                                                                                                                                    | 0                | 3  | 4   | 0                 | 6  | 8  |
| N.B.—The total amount of these items, where applicable, to be entered on the summons.                                                                                                                                          |                  |    |     |                   |    |    |
| 11. Attending lodging judge's order, and preparing statement of cause of action or defence, including copies, and lodging same with registrar, if signed by attorney (sections 7 and 10 of the County Courts Act, 1867) ... .. | 0                | 13 | 4   | 0                 | 13 | 4  |
| 12. Examining and taking minutes of evidence of each witness afterwards allowed by the judge... ..                                                                                                                             | 0                | 3  | 4   | 0                 | 6  | 8  |
| If more than six folios, every additional folio (whether counsel employed or not) ... ..                                                                                                                                       | 0                | 1  | 0   | 0                 | 1  | 0  |

(a) See note at end of scale.

|                                                                                                                                                                                                                                                                                                                                                                                        | Lower Scale. |    |    | Higher Scale. |    |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----|----|---------------|----|----------|
|                                                                                                                                                                                                                                                                                                                                                                                        | £            | s. | d. | £             | s. | d.       |
| 13. Drawing brief for counsel, per folio ...                                                                                                                                                                                                                                                                                                                                           | 0            | 1  | 0  | 0             | 1  | 0        |
| 14. Attending counsel therewith ...                                                                                                                                                                                                                                                                                                                                                    | 0            | 3  | 4  | 0             | 6  | 8        |
| 15. Fee to counsel and clerk, sum paid not exceeding ...                                                                                                                                                                                                                                                                                                                               | 3            | 5  | 6  | 5             | 10 | 0        |
| 16. If conference with counsel allowed, appointing it and attending counsel .                                                                                                                                                                                                                                                                                                          | 0            | 6  | 8  | 0             | 13 | 4        |
| 17. Fee to counsel and clerk, on conference                                                                                                                                                                                                                                                                                                                                            | 1            | 6  | 0  | 1             | 6  | 0        |
| 18. Attending court on trial, with counsel                                                                                                                                                                                                                                                                                                                                             | 1            | 1  | 0  | 1             | 10 | 0        |
| 19. Attending court and conducting cause, where no counsel employed ...                                                                                                                                                                                                                                                                                                                | 2            | 0  | 0  | 2             | 0  | 0        |
| 20. Where judgment is deferred, attending court to hear it ...                                                                                                                                                                                                                                                                                                                         | 0            | 6  | 8  | 0             | 6  | 8        |
| 21. Plans, charts, or models, where necessary for use at hearing, by special order on taxation, not exceeding ...                                                                                                                                                                                                                                                                      | 2            | 2  | 0  | 2             | 2  | 0        |
| 22. Witnesses' expenses, according to scale in force.                                                                                                                                                                                                                                                                                                                                  |              |    |    |               |    |          |
| 23. Attending taxing costs ...                                                                                                                                                                                                                                                                                                                                                         | 0            | 6  | 8  | 0             | 6  | 8        |
| 24. Letters to be allowed once only in action or matter ...                                                                                                                                                                                                                                                                                                                            | 0            | 5  | 0  | 0             | 5  | 0        |
| 25. Serving any notice on a party or his solicitor, including copy thereof ...                                                                                                                                                                                                                                                                                                         | 0            | 3  | 6  | 0             | 5  | 0        |
| 26. If served beyond three miles of registrar's office, reasonable expenses for travelling and maintenance.                                                                                                                                                                                                                                                                            |              |    |    |               |    |          |
| <i>Occasional Costs.</i>                                                                                                                                                                                                                                                                                                                                                               |              |    |    |               |    |          |
| 27. Transfer, lodging order of ...                                                                                                                                                                                                                                                                                                                                                     | 0            | 10 | 0  | 0             | 16 | 8        |
| 28. Notice to produce, notice to admit—notice of application for a new trial, or to set aside proceedings—including copies or duplicate originals and service—and notice of special defence and copies, including particulars, and copies in cases of set-off, and attending registrar of the court therewith, such notices, particulars, and copies being signed by the solicitor ... | 0            | 6  | 8  | 0             | 13 | 4        |
| 29. On receipt of notice to produce or admit or to answer interrogatories, perusing same and advising thereon                                                                                                                                                                                                                                                                          | 0            | 6  | 8  | 0             | 13 | 4        |
| 30. All applications or motions, or attending court to answer applications and motions under order xiii. ...                                                                                                                                                                                                                                                                           | 0            | 6  | 8  | 0             | 6  | 8        |
| 31. Drawing interrogatories and answer thereto under last-mentioned order                                                                                                                                                                                                                                                                                                              | 0            | 5  | 0  | 0             | 5  | 0        |
| If more than five folios, per folio                                                                                                                                                                                                                                                                                                                                                    | 0            | 1  | 0  | 0             | 1  | 0        |
| 32. Attending examination under order xxiv. ...                                                                                                                                                                                                                                                                                                                                        | 0            | 6  | 8  | 0             | 6  | 8        |
| 33. Attending inspecting documents ...                                                                                                                                                                                                                                                                                                                                                 | 0            | 6  | 8  | 0             | 6  | 8        |
|                                                                                                                                                                                                                                                                                                                                                                                        |              |    |    |               |    | per hour |



|                                                                                                                                                                                                        | Lower<br>Scale. |    |    | Higher<br>Scale. |    |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----|----|------------------|----|----|
|                                                                                                                                                                                                        | £               | s. | d. | £                | s. | d. |
| 34. Mileage, one way, from the solicitor's place of business to place of inspection of documents, for each mile, not exceeding, unless by special order of judge, in the whole 20 miles ...            | 0               | 1  | 0  | 0                | 1  | 0  |
| 35. All necessary affidavits, not exceeding five folios, including filing, each ...                                                                                                                    | 0               | 5  | 0  | 0                | 5  | 0  |
| 36. For every additional folio ...                                                                                                                                                                     | 0               | 1  | 0  | 0                | 1  | 0  |
| 37. Oath; sum paid.                                                                                                                                                                                    |                 |    |    |                  |    |    |
| 38. Attending court for an order to bring up a prisoner to give evidence ...                                                                                                                           | 0               | 4  | 0  | 0                | 4  | 0  |
| 39. Attending court to support or oppose motion for any application, or where no counsel employed ...                                                                                                  | 0               | 13 | 4  | 1                | 1  | 0  |
| 40. Attending in the last-mentioned cases with counsel ...                                                                                                                                             | 0               | 10 | 0  | 0                | 13 | 4  |
| 41. Fee to counsel and clerk in such cases, sum paid (not exceeding) ...                                                                                                                               | 1               | 3  | 6  | 2                | 6  | 6  |
| 42. All necessary applications and motions to the court not otherwise provided for, including instructions and all attendances ...                                                                     | 0               | 6  | 8  | 0                | 13 | 4  |
| 43. Solicitor's travelling expenses to attend court, one way, not exceeding 20 miles, per mile ...                                                                                                     | 0               | 1  | 0  | 0                | 1  | 0  |
| 44. Where in the opinion of the registrar the solicitor cannot return the same night, in addition to the above mileage                                                                                 | 1               | 11 | 6  | 1                | 11 | 6  |
| 45. Any attendance at the office of the registrar, or any attendance upon the opposite party, which the registrar may, upon taxation, think was necessary ...                                          | 0               | 3  | 4  | 0                | 6  | 8  |
| 46. All costs for letters, and for searches for certificates of births, marriages, and deaths, which the registrar may upon taxation think necessary, such sum as the registrar shall deem reasonable. |                 |    |    |                  |    |    |
| 47. Fees and copies (sum paid).                                                                                                                                                                        |                 |    |    |                  |    |    |
| 48. All necessary copies, per folio ...                                                                                                                                                                | 0               | 0  | 4  | 0                | 0  | 4  |
| 49. Preparing admission by defendant ...                                                                                                                                                               | 0               | 3  | 4  | 0                | 6  | 8  |
| 50. Drawing accounts and other documents not included in the foregoing costs, but allowed upon taxation of costs to be necessary, per folio ...                                                        | 0               | 0  | 8  | 0                | 0  | 8  |
| 51. For perusing and adapting old abstracts of title, per sheet ...                                                                                                                                    | 0               | 3  | 4  | 0                | 3  | 4  |
| 52. Drawing abstracts of additional deeds and documents, per sheet ...                                                                                                                                 | 0               | 6  | 8  | 0                | 6  | 8  |
| 53. For preparing conditions and contracts of sale, and fair copy, per folio ...                                                                                                                       | 0               | 0  | 8  | 0                | 0  | 8  |

|                                                                                                                                                                                                                                                                                                                                 | Lower Scale. |    |    | Higher Scale. |    |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----|----|---------------|----|----|
|                                                                                                                                                                                                                                                                                                                                 | £            | s. | d. | £             | s. | d. |
| 54. Where condition and contract are not submitted to counsel, in addition to the above there shall be allowed for perusing abstracts, every three sheets                                                                                                                                                                       | 0            | 3  | 4  | 0             | 3  | 4  |
| 55. Where conditions and contracts are to be settled by counsel, instructions to counsel to accompany abstract, and attendance therewith or letter...                                                                                                                                                                           | 0            | 6  | 8  | 0             | 13 | 4  |
| 56. Fee to counsel and clerk ... ..                                                                                                                                                                                                                                                                                             | —            | —  | —  | —             | —  | —  |
| 57. Attending sale ... ..                                                                                                                                                                                                                                                                                                       | 1            | 1  | 0  | 2             | 2  | 0  |
| 58. Where by any proceeding taken by the opposite party it becomes necessary to advise or receive instruction from a client in the progress of an action or matter, for each attendance ...                                                                                                                                     | 0            | 6  | 8  | 0             | 13 | 4  |
| 59. Where in the course of an action or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowed upon taxation between party and party, the registrar shall apply to the judge to allow such sums as he may think fit out of any funds in court applicable to that purpose. |              |    |    |               |    |    |

*Case.**Sections 11 or 12 of the County Courts Act, 1867.*

|                                                                                 |   |   |    |   |
|---------------------------------------------------------------------------------|---|---|----|---|
| 60. Drawing case, per folio ... ..                                              | — | 0 | 1  | 0 |
| 61. Perusing and settling case prepared by the other party in action, per folio | — | 0 | 0  | 6 |
| 62. Drawing briefs for counsel to argue case                                    | — | 1 | 1  | 0 |
| 63. Attending counsel with brief ... ..                                         | — | 0 | 3  | 4 |
| 64. Fee to counsel upon brief, sum paid not exceeding... ..                     | — | 3 | 5  | 6 |
| 65. Attending court when counsel employed ... ..                                | — | 1 | 1  | 0 |
| 66. Attending court when counsel not employed ... ..                            | — | 0 | 15 | 0 |

*Costs of the Day on Adjournment of Cause.*

|                                                                    |   |    |   |   |    |   |
|--------------------------------------------------------------------|---|----|---|---|----|---|
| 67. Solicitor for attending court where no counsel employed ... .. | 0 | 15 | 0 | 0 | 15 | 0 |
| 68. Attending with counsel ... ..                                  | 0 | 10 | 0 | 0 | 13 | 4 |
| 69. Refresher fee to counsel and clerk ...                         | 1 | 3  | 6 | 1 | 3  | 6 |
| 70. Witnesses' expenses, same as on trial.                         |   |    |   |   |    |   |

*Arbitration.*

|                                                                   |   |   |   |   |   |   |
|-------------------------------------------------------------------|---|---|---|---|---|---|
| 71. Attending reference, without counsel, for each sitting ... .. | 1 | 0 | 0 | 1 | 0 | 0 |
|-------------------------------------------------------------------|---|---|---|---|---|---|

|                                                                                                                                                                                                                                     | Lower<br>Scale. |    |    | Higher<br>Scale. |    |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----|----|------------------|----|----|
|                                                                                                                                                                                                                                     | £               | s. | d. | £                | s. | d. |
| 72. Attending reference, with counsel, for each sitting ... ..                                                                                                                                                                      | 0               | 15 | 0  | 0                | 15 | 0  |
| 73. Where sitting exceeds four hours, for every additional hour ... ..                                                                                                                                                              | 0               | 6  | 8  | 0                | 6  | 8  |
| 74. Fee to counsel and clerk, for each sitting, sum paid not exceeding ...                                                                                                                                                          | 2               | 4  | 6  | 2                | 4  | 6  |
| 75. Witnesses' expenses, same as on trial.                                                                                                                                                                                          |                 |    |    |                  |    |    |
| <i>Note.</i> —Cost of counsel and solicitor, or of a solicitor on attending reference, shall not be allowed without the order of the judge; nor shall the costs of more than one sitting be allowed without the order of the judge. |                 |    |    |                  |    |    |
| <i>New Trial.</i>                                                                                                                                                                                                                   |                 |    |    |                  |    |    |
| 76. Costs to be allowed on the same scale as on the original trial.                                                                                                                                                                 |                 |    |    |                  |    |    |
| <i>Costs on Appeals.</i>                                                                                                                                                                                                            |                 |    |    |                  |    |    |
| 77. Preparing notice of appeal, including copies and service ... ..                                                                                                                                                                 | 0               | 5  | 0  | 0                | 10 | 0  |
| 78. Paying money into court as deposit on appeal, including notice and service thereof... ..                                                                                                                                        | 0               | 3  | 0  | 0                | 3  | 0  |
| 79. Notice of nature and particulars of proposed security, including copies and service ... ..                                                                                                                                      | 0               | 5  | 0  | 0                | 5  | 0  |
| 80. Preparing case, including copies ...                                                                                                                                                                                            | 0               | 10 | 0  | 1                | 1  | 0  |
| 81. Attending judge to sign, or to settle and sign ... ..                                                                                                                                                                           | 0               | 6  | 8  | 0                | 6  | 8  |
| 82. Transmitting and depositing copies of case to party and with registrar ...                                                                                                                                                      | 0               | 5  | 0  | 0                | 5  | 0  |
| 83. Transmitting case and copies to court of appeal, including notice thereof to successful party ... ..                                                                                                                            | 0               | 7  | 0  | 0                | 7  | 0  |
| 84. Application to judge for leave to proceed on the judgment ... ..                                                                                                                                                                | 0               | 5  | 0  | 0                | 7  | 0  |
| 85. Depositing order of court of appeal, including notice and service thereof.                                                                                                                                                      | 0               | 3  | 4  | 0                | 6  | 8  |

*Order X.—Counter or other Claim.*

Any additional costs occasioned by a counter or other claim shall be taxed, and may be allowed as if such claim had been made by a separate action, except that no item shall be allowed for any charge which has been allowed in respect of the original action or the defence thereto.

The registrar is to tax the bills of costs of defendants upon the lower scale when the subject-matter does not exceed 100*l.*, and upon the higher when it exceeds 100*l.* or the action is brought under either section 11 or 12 of the County Courts Act, 1867; and the bills of costs of plaintiffs upon the lower scale when the sum recovered or the subject-matter does not exceed 100*l.*, and upon the higher when the sum recovered or the subject-matter exceeds 100*l.*, or the action is brought under either section 11 or 12 of the County Courts Act, 1867, unless in either case the judge shall otherwise order.

Costs in actions under the County Courts Act, 1856, s. 23, shall be taxed according to the scale of taxation used in the High Court of Justice, so far as it is directly applicable; and where it is not so applicable, the principle of that scale shall be followed.

As to special allowances of costs, see order xxxvi.

We, GEORGE LAKE RUSSELL, JOHN BURY DASENT, JOHN WORLLEDGE, RUPERT ALFRED KETTLE, and WILLIAM FURNER, being judges of county courts appointed to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the 32nd section of the County Courts Act, 1856, have by virtue of the powers vested in us thereby and of all other powers enabling us in this behalf, framed the foregoing rules and scales of costs, and we do hereby certify the same to the lord chancellor accordingly.

G. L. RUSSELL.  
J. B. DASENT.  
J. WORLLEDGE.  
RUPERT KETTLE.  
W. FURNER.

I approve of these rules and costs to come into force in all county courts on the 2nd day of November, 1875.

CAIRNS, C.

#### TREASURY ORDER REGULATING COURT FEES, 1875.

In pursuance of the powers given by the County Courts Act, 1856, the County Courts Act, 1865, the County Courts Act, 1867, the Companies Act, 1867, and the County Courts Act, 1875, and of all other powers enabling us in this behalf, we, the undersigned, two of the Commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the lord chancellor, order that, on and after the 2nd day of November, 1875, the several fees, or sums in the name of fees, specified in the schedules hereunder written shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings set forth; and that the fees so authorised to be taken, with the exception of the fees for keeping possession of goods, and with the exception of the fees mentioned in schedule B, shall be received by the registrars of the different county courts, and shall be accounted for and paid over by them to the

treasurers of their respective courts, or where there is no treasurer, the superintendent of county courts, and that the fees set forth in schedule B shall be received by the registrars for the use of themselves and the high bailiffs, according as the duties are to be performed by the registrars or high bailiffs.

MAHON.

ROW. WINN.

I approve of the annexed schedules of fees.

CAIRNS, C.

26th October, 1875.

*[An order or rule referred to in the following schedules shall mean the order or rule so numbered in the County Court Rules, 1875.]*

#### SCHEDULE A.

For every plaint or petition, 1s. in the £.

Where the claim or demand exceeds 40s., and an ordinary summons is to be served by bailiff, an additional fee of 1s.

Where in any case the number of defendants shall exceed three, an additional fee of 1s. for each defendant above three.

No fee shall be payable on any application for a new trial, or to set aside proceedings, or for a summons in an interpleader.

For entering judgment by consent under sections 8 or 9 of the County Courts Act, 1850, or under a default summons, 1s. in the £ on the amount claimed in the summons.

For every hearing, 2s. in the £.

In all cases where the defendant shall either personally, or by his solicitor or agent, admit the claim, one half of the fee paid by the plaintiff for the hearing of the plaint shall be returned to the plaintiff by the registrar of the court, although the court may have been required to decide upon the terms and conditions upon which the claim is to be paid.

An additional hearing fee shall be taken for every new trial.

The hearing on interpleader shall not be prepaid, but shall be estimated on the amount of the money or the value of the goods claimed, which value, in case of dispute, shall be assessed by the judge, who, at the hearing, shall direct by whom and when and how such fee shall be paid.

No fee shall be payable for hearing any application for a new trial, or to set aside proceedings.

For issuing every warrant against the goods, 1s. 6d. in the £ on the amount for which such warrant shall issue.

For issuing every warrant to deliver possession of tenements, 1s. 6d. in the £.

For every judgment summons under the Debtors Act, 1869, 3d. in the £ on so much of the amount of the original demand as, in obedience to the order of the court, should have been paid at the time of the issue of the summons.

Where such last-mentioned amount does not exceed 20s., an additional fee of 6d.; and where such amount does exceed 20s., an additional fee of 1s.

For every hearing of the matters mentioned in such judgment summons, 6*d.* in the £ on the amount upon which the fee on the summons is calculated.

For issuing every order of commitment, 1*s.* 6*d.* in the £ on the amount upon which the fee on the summons is calculated.

For keeping possession of goods till sale, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding five days, 6*d.* in the £ on the value of the goods seized, to be fixed by appraisement in case of dispute.

In all plaints, all poundage, except where otherwise specified in this schedule, shall be estimated on the amount of the claim.

In plaints under sections 11 and 12 of the County Courts Act, 1867, poundage shall be estimated as upon a claim for a sum of 20*l.*

In replevins all poundage, except as aforesaid, shall be estimated on the amount of the alleged rent or damage, to be fixed by the registrar.

In plaints for the recovery of tenements when the term has expired or been determined by notice, all poundage, except as aforesaid, shall be estimated on the amount of the weekly, monthly, or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

Where a claim for rent or mesne profits, or both, is added to a plaint for the recovery of a tenement, an additional poundage shall be taken on the amount or amounts so claimed, but where thereby the total amount on which poundage would be taken shall exceed 20*l.*, the poundage shall be estimated on 20*l.* only.

In plaints for the recovery of tenements for non-payment of rent, all poundage, except as aforesaid, shall be estimated on the amount of the half-yearly rent of the tenement.

Where a counter or other claim is made under order x. of the County Court Rules, 1875, the same fees shall be taken as upon the entry and hearing of a plaint.

In proceedings under the Merchant Shipping Act, 1854, the Literary and Scientific Institutions Act, 1854, and the Metropolitan Buildings Act, 1855, the poundage shall be estimated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of 20*l.*

In proceedings under the Succession Duty Act, 1853, the poundage shall be estimated upon the amount in dispute.

In proceedings under the Friendly Societies Act, 1875, or under any Act giving the court jurisdiction in any matter, such other Act not being a county court Act, the poundage shall be estimated upon the amount in dispute.

In the above cases where the poundage would, but for this direction, be estimated on an amount exceeding 20*l.*, it shall be estimated at 20*l.* only.

In every case where the poundage cannot be estimated by any rule in this schedule, it shall be estimated on 20*l.*

All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant, except as before directed, where the number of defendants exceed three.

|                                                                                                         | £ | s. | d. |
|---------------------------------------------------------------------------------------------------------|---|----|----|
| For every sitting under the Ballot Act, 1872 ...                                                        | 2 | 0  | 0  |
| For taking the acknowledgment of a married woman,<br>where only one ... ..                              | 1 | 0  | 0  |
| And 10s. for every additional woman.                                                                    |   |    |    |
| For a warrant to replevy ... ..                                                                         | 0 | 2  | 6  |
| For a replevin bond, where the alleged rent or<br>damage does not exceed 20l. ... ..                    | 0 | 10 | 6  |
| For a replevin bond, where the alleged rent or damage<br>exceeds 20l. ... ..                            | 1 | 1  | 0  |
| For notice to distrainor ... ..                                                                         | 0 | 2  | 6  |
| For every subpoena to be served in a home district ;<br>if served within two miles of court-house... .. | 0 | 1  | 0  |
| For every mile beyond two ... ..                                                                        | 0 | 0  | 6  |
| but the total fee to be taken is in no case to<br>exceed 3s.                                            |   |    |    |
| For every subpoena to be served in a foreign district                                                   | 0 | 3  | 0  |
| For every sitting under the Agricultural Holdings<br>(England) Act, 1875 ... ..                         | 1 | 0  | 0  |

PROCEEDINGS UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES  
Act, 1862.

|                                                                                      | £ | s. | d. |
|--------------------------------------------------------------------------------------|---|----|----|
| For every petition presented to a court, under section<br>17 of the above Act ... .. | 1 | 0  | 0  |
| For every order for winding-up ... ..                                                | 1 | 0  | 0  |

THE COMPANIES ACT, 1862.

|                                           |   |   |   |
|-------------------------------------------|---|---|---|
| For every sitting to take evidence ... .. | 2 | 0 | 0 |
|-------------------------------------------|---|---|---|

THE COMPANIES ACT, 1867.

|                                           |   |   |   |
|-------------------------------------------|---|---|---|
| For every sitting before the judge ... .. | 1 | 0 | 0 |
|-------------------------------------------|---|---|---|



## SCHEDULE B.

## PART I.

| Fees where the Court exercises jurisdiction under the County Courts Act, 1867, the County Courts Act, 1875, the Supreme Court of Judicature Act, 1873, or the Agricultural Holdings (England) Act, 1875.  |   | — |    |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|----|----|
| <i>Registrar's Fees.</i>                                                                                                                                                                                  |   | £ | s. | d. |
| For examining, allowing, and filing every affidavit under section 1 of County Courts Act, 1875, where the claim does not exceed 40s. ... ..                                                               |   | 0 | 1  | 0  |
| For the like, where the claim exceeds 40s. ... ..                                                                                                                                                         |   | 0 | 2  | 0  |
| For entering writ under sections 7 or 10 of the County Courts Act, 1867, and sending notice to parties of day of trial, &c. ... ..                                                                        |   | 1 | 1  | 0  |
| Taxing costs in such actions ... ..                                                                                                                                                                       |   | 0 | 5  | 0  |
| On entry of plaint under sections 11 and 12 of the County Courts Act, 1867 ... ..                                                                                                                         |   | 1 | 1  | 0  |
| Where the plaint has not been entered under section 12, and the judge shall certify that the court has exercised jurisdiction under that section, the above fee of 1 <i>l.</i> 1 <i>s.</i> shall be paid. |   |   |    |    |
| On every order for a new trial in actions commenced under sections 11 and 12 of County Courts Act, 1867 ... ..                                                                                            |   | 0 | 10 | 6  |
| Taxing costs under either of the said sections 11 and 12, or under section 23 of the Agricultural Holdings (England) Act ... ..                                                                           |   | 0 | 10 | 6  |
| For sealing every warrant, precept, or writ issued from a court other than a county court, 6 <i>d.</i> in the £ on the amount for which it issues.                                                        |   |   |    |    |
| For drawing up, sealing, and issuing every order under the following rules or any of them:—                                                                                                               |   |   |    |    |
| Order x., rules 2—4 ... ..                                                                                                                                                                                | } | 0 | 4  | 0  |
| Order xi., rules 4 and 8 ... ..                                                                                                                                                                           |   |   |    |    |
| Order xxxiv., rule 7 ... ..                                                                                                                                                                               |   |   |    |    |
| Order xxxvii., rules 15 and 16 ... ..                                                                                                                                                                     |   |   |    |    |
| For drawing, sealing, and issuing every special judgment or order in the nature of a decree, where court exercises jurisdiction under the Supreme Court of Judicature Act, 1873, or under order xxxiv.    |   | 0 | 15 | 0  |
| For every sitting under—                                                                                                                                                                                  |   |   |    |    |
| Order xi., rule 7 ... ..                                                                                                                                                                                  | } | 0 | 10 | 0  |
| Order xiv., rules 7 and 8 ... ..                                                                                                                                                                          |   |   |    |    |
| Order xviii., rule 17 ... ..                                                                                                                                                                              |   |   |    |    |
| Where the sitting is longer than one hour, for every additional hour, or part of an hour ...                                                                                                              |   | 0 | 10 | 0  |
| For every notice or summons under—                                                                                                                                                                        |   |   |    |    |
| Order xi., rule 1 ... ..                                                                                                                                                                                  | } | 0 | 2  | 6  |
| Order xiii., rule 3 ... ..                                                                                                                                                                                |   |   |    |    |
| Order xvi., rule 12 ... ..                                                                                                                                                                                |   |   |    |    |
| Order xix., rules 30 and 31 ... ..                                                                                                                                                                        |   |   |    |    |
| Orders xxxii. and xxxiv. ... ..                                                                                                                                                                           |   |   |    |    |

| Fees where the Court exercises jurisdiction under the County Courts Act, 1867, the County Courts Act, 1875, the Supreme Court of Judicature Act, 1873, or the Agricultural Holdings (England) Act, 1875.                                                              |  | — |    |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---|----|----|
|                                                                                                                                                                                                                                                                       |  | £ | s. | d. |
| For copies of every proceeding or document under order xxxvii., rule 3, at per folio ... ..                                                                                                                                                                           |  | 0 | 0  | 4  |
| For making a return to a writ of <i>certiorari</i> for costs out of pocket ... ..                                                                                                                                                                                     |  | 0 | 15 | 0  |
| Filing affidavit on issue of duplicate plaint-note ...                                                                                                                                                                                                                |  | 0 | 0  | 6  |
| For every bond with sureties ... ..                                                                                                                                                                                                                                   |  | 0 | 5  | 0  |
| <i>High Bailiff's Fees.</i>                                                                                                                                                                                                                                           |  |   |    |    |
| For every default summons under section 1 of the County Courts Act, 1875, where not served by a solicitor ... ..                                                                                                                                                      |  | 0 | 1  | 0  |
| For executing every warrant, precept, or writ issued by a court other than a county court, 1s. in the £ on the amount for which it issues; and for keeping possession, appraisement, and sale, the same allowances as under a warrant of execution by a county court. |  |   |    |    |
| For delivering the goods on completion of a replevin bond ... ..                                                                                                                                                                                                      |  | 1 | 1  | 0  |
| together with 6d. a mile from the court-house to the place where the goods are.                                                                                                                                                                                       |  |   |    |    |

## PART II.

| Fees where the Court exercises jurisdiction under the County Courts Act, 1865, or sections 9, 24, 25, 26, and 27 of the County Courts Act, 1867, or section 12 of the Partition Act, 1868.    | Where the subject-matter of the suit or proceeding |                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|------------------------|
|                                                                                                                                                                                               | Does not exceed 100l.                              | Where it exceeds 100l. |
|                                                                                                                                                                                               | £ s. d.                                            | £ s. d.                |
| <i>Registrar's Fees.</i>                                                                                                                                                                      |                                                    |                        |
| Filing affidavit and receipts, giving certificate, and issuing notices in matters under order xxxi., rules 1 to 11, inclusive                                                                 | 0 10 0                                             | 0 15 0                 |
| Where the notices under rule 11 exceed five, for every additional notice                                                                                                                      | 0 0 6                                              | 0 1 0                  |
| On transfer of proceedings from Chancery division of High Court of Justice; for perusing and filing papers, application to judge, drawing directions to proceed, and notice to parties ... .. | 1 1 0                                              | 1 1 0                  |
| For attesting admission of defendant and filing, order xii., rule 3 ... ..                                                                                                                    | 0 3 6                                              | 0 5 0                  |
| For filing statement of defendant, or notice by plaintiff for dismissal of cause, order xii., rules 1 and 3 ... ..                                                                            | 0 2 6                                              | 0 4 0                  |
| For settling draft order on an <i>ex parte</i> application, and the order as made, order xi., rule 4 ... ..                                                                                   | 0 10 0                                             | 0 15 0                 |

| Fees where the Court exercises jurisdiction under the County Courts Act, 1865, or sections 9, 24, 25, 26, and 27 of the County Courts Act, 1867, or section 12 of the Partition Act, 1868.                                                     | Where the subject-matter of the suit or proceeding |                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|------------------------|
|                                                                                                                                                                                                                                                | Does not exceed 100l.                              | Where it exceeds 100l. |
|                                                                                                                                                                                                                                                | £ s. d.                                            | £ s. d.                |
| Drawing and filing order of transfer, under order xx., rule 5, and transmitting order and papers ... ..                                                                                                                                        | 0 10 0                                             | 0 15 0                 |
| For drawing, filing, and sealing every special order or judgment in any action or matter in the nature of a decree (other than orders obtained <i>ex parte</i> under order xi., rule 4), and every final order, including copy for service ... | 0 15 0                                             | 1 5 0                  |
| For drawing every order for payment of money, under order xxvii., rule 6, or any order under order xxxvii., rules 15 and 16 ... ..                                                                                                             | 0 4 0                                              | 0 4 0                  |
| For every order for further directions under order xviii., rule 34 ... ..                                                                                                                                                                      | 0 7 0                                              | 0 12 0                 |
| For filing or recording every order by judge for adjournment ... ..                                                                                                                                                                            | 0 2 6                                              | 0 4 0                  |
| For drawing advertisements and inserting                                                                                                                                                                                                       | 0 5 0                                              | 0 7 0                  |
| For every sitting on which the registrar is employed in taking accounts, making inquiries, or acting as a special examiner under order xvii., rules 16 and 17, or order xiv., rules 7 and 8 ... ..                                             | 0 10 0                                             | 0 10 0                 |
| Where the sitting is longer than one hour, then for every additional hour or part thereof ... ..                                                                                                                                               | 0 5 0                                              | 0 7 0                  |
| Where the registrar is required to attend elsewhere than at the court or office (in addition) ... ..                                                                                                                                           | 0 10 0                                             | 1 0 0                  |
| Mileage one way ... ..                                                                                                                                                                                                                         | 0 0 6                                              | 0 0 6                  |
| For certificate under order xviii., rule 30 .                                                                                                                                                                                                  | 0 15 0                                             | 1 10 0                 |
| For making and transmitting note of order under order xxxvii., rule 52 ... ..                                                                                                                                                                  | 0 2 6                                              | 0 3 6                  |
| For every inspection of certificate, order xviii., rule 31 ... ..                                                                                                                                                                              | 0 1 0                                              | 0 2 0                  |
| For filing and sealing every affidavit, or other document not being a document annexed to an affidavit ... ..                                                                                                                                  | 0 1 0                                              | 0 1 0                  |
| For every application for a search and searching ... ..                                                                                                                                                                                        | 0 2 0                                              | 0 2 0                  |
| For issuing every warrant ... ..                                                                                                                                                                                                               | 0 2 0                                              | 0 3 0                  |
| For giving every notice required by any order, except as hereafter mentioned ... ..                                                                                                                                                            | 0 2 0                                              | 0 2 6                  |
| Where the notices are given under order xviii., rule 36 ... ..                                                                                                                                                                                 | 0 3 0                                              | 0 5 0                  |
| For every office copy, per folio ... ..                                                                                                                                                                                                        | 0 0 4                                              | 0 0 4                  |
| For every taxation of costs ... ..                                                                                                                                                                                                             | 0 7 0                                              | 0 10 0                 |

| Fees where the Court exercises jurisdiction under the County Courts Act, 1865, or sections 9, 24, 25, 26, and 27 of the County Courts Act, 1867, or section 12 of the Partition Act, 1863.                         | Where the subject-matter of the suit or proceeding |                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|---------------------------------|
|                                                                                                                                                                                                                    | Does not exceed 100 <i>l</i> .                     | Where it exceeds 100 <i>l</i> . |
|                                                                                                                                                                                                                    | £ s. d.                                            | £ s. d.                         |
| For auditing receiver's accounts where sum in account does not exceed 100 <i>l</i> . ...                                                                                                                           | 0 5 0                                              | 0 5 0                           |
| For every additional 50 <i>l</i> . or fraction thereof                                                                                                                                                             | 0 2 6                                              | 0 2 6                           |
| For every bond with sureties ... ..                                                                                                                                                                                | 0 5 0                                              | 0 7 6                           |
| For every summons under order xviii., rule 17 ... ..                                                                                                                                                               | 0 2 6                                              | 0 2 6                           |
| <i>High Bailiff's Fees.</i>                                                                                                                                                                                        |                                                    |                                 |
| For service, within home district, of every summons, petition, notice, or order :                                                                                                                                  |                                                    |                                 |
| If within two miles of court-house ...                                                                                                                                                                             | 0 4 6                                              | 0 6 6                           |
| If beyond one mile, then for every additional mile or part of a mile ...                                                                                                                                           | 0 0 6                                              | 0 0 6                           |
| For service of every summons, petition, notice, or order, in a foreign district, each defendant to be served ... ..                                                                                                | 0 6 0                                              | 0 8 0                           |
| Where service is ordered to be personal, then an additional fee of ... ..                                                                                                                                          | 0 4 0                                              | 0 5 0                           |
| For the execution of each warrant within home district ... ..                                                                                                                                                      | 0 7 6                                              | 0 10 0                          |
| With an allowance of mileage, double the amount of the allowance on summonses.                                                                                                                                     |                                                    |                                 |
| For execution of each warrant in a foreign district ... ..                                                                                                                                                         | 0 10 0                                             | 0 15 0                          |
| Keeping possession, for each day the man is actually in possession ... ..                                                                                                                                          | 0 6 0                                              | 0 7 6                           |
| 3 <i>s</i> . 6 <i>d</i> . of the above sum is to be paid to the man in possession, and his receipt produced to registrar.                                                                                          |                                                    |                                 |
| Superintending sale, whether by auction or private contract, making out account, and paying money into court, 2 <i>l</i> . per cent. on first 50 <i>l</i> . so paid, and 1 <i>l</i> . per cent. on all afterwards. |                                                    |                                 |

N.B.—Where the amount or value of the subject-matter of the action or matter is not disclosed by the plaint or petition, it shall be taken not to exceed 100*l*., and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l*., the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l*. may then be taken.

## PART III.

WINDING UP UNDER THE COMPANIES ACT, 1867, AND THE  
INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862, AND THE  
BUILDING SOCIETIES ACT, 1874.

| <i>Registrar's Fees.</i>                                                                           |     |     |     |     | £ | s. | d. |
|----------------------------------------------------------------------------------------------------|-----|-----|-----|-----|---|----|----|
| For every summons                                                                                  | ... | ... | ... | ... | 0 | 3  | 0  |
| For every order                                                                                    | ... | ... | ... | ... | 0 | 5  | 0  |
| For every office copy of order                                                                     | ... | ... | ... | ... | 0 | 5  | 0  |
| For every advertisement                                                                            | ... | ... | ... | ... | 1 | 0  | 0  |
| For every certificate                                                                              | ... | ... | ... | ... | 0 | 5  | 0  |
| For filing every affidavit or statement on affirmation,<br>declaration, or attestation upon honour | ... | ... | ... | ... | 0 | 1  | 6  |
| For every sitting by the registrar                                                                 | ... | ... | ... | ... | 0 | 10 | 0  |
| When the sitting is longer than an hour, then for<br>every additional hour or part thereof         | ... | ... | ... | ... | 0 | 10 | 0  |
| For taxation of bill of costs                                                                      | ... | ... | ... | ... | 0 | 10 | 0  |

*High Bailiff's Fees.*

Same fees for service and execution as in Part II.

*Protection of Property of deserted Married Women.*

20 & 21 Vict. c. 85, s. 21.

*Registrar's Fee.*

|                                                                                                                                                                      |     |     |     |     |     |   |   |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|-----|-----|---|---|---|
| For sealing every order brought to a registrar, and<br>entering name, and transmitting a sealed copy<br>of the entry to the registrar of county courts'<br>judgments | ... | ... | ... | ... | ... | 0 | 5 | 0 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|-----|-----|---|---|---|

## PART IV.

| Fees where the Court exercises jurisdiction under<br>the County Courts Admiralty Jurisdiction Acts,<br>1868 and 1869. | Where the amount<br>claimed |                  |         |         |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------|---------|---------|
|                                                                                                                       | Does not<br>exceed<br>100l. | Exceeds<br>100l. | £ s. d. | £ s. d. |
| <i>Registrar's Fees.</i>                                                                                              |                             |                  |         |         |
| On every warrant of arrest of a vessel                                                                                | ...                         | ...              | 0 5 0   | 0 7 6   |
| „ release                                                                                                             | ...                         | ...              | 0 5 0   | 0 7 6   |
| „ bail bond                                                                                                           | ...                         | ...              | 0 5 0   | 0 7 6   |
| „ affidavit of justification                                                                                          | ...                         | ...              | 0 2 6   | 0 2 6   |
| „ subpoena                                                                                                            | ...                         | ...              | 0 2 0   | 0 3 0   |
| „ notice of hearing                                                                                                   | ...                         | each             | 0 1 6   | 0 2 6   |
| Summons for the attendance of assessor at<br>the hearing of any suit                                                  | ...                         | each             | 0 1 6   | 0 2 6   |
| For every order of transfer                                                                                           | ...                         | ...              | 0 10 0  | 0 15 0  |
| Where a special court is to be held for the<br>hearing of the action                                                  | ...                         | ...              | 1 5 0   | 1 15 0  |

| Fees where the Court exercises jurisdiction under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869.                                                                                                                                            | Where the amount claimed       |                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|------------------------|
|                                                                                                                                                                                                                                                            | Does not exceed 100 <i>l</i> . | Exceeds 100 <i>l</i> . |
|                                                                                                                                                                                                                                                            | £ s. d.                        | £ s. d.                |
| Where the court is to sit for the hearing or part hearing of an action beyond three miles from registrar's office, then in addition ... ..                                                                                                                 | 0 15 0                         | 0 15 0                 |
| Mileage one way from office to place of sitting, for each mile ... ..                                                                                                                                                                                      | 0 0 6                          | 0 0 6                  |
| When the registrar cannot return the same night ... ..                                                                                                                                                                                                     | 1 1 0                          | 1 1 0                  |
| For drawing final judgment ... ..                                                                                                                                                                                                                          | 0 10 0                         | 0 15 0                 |
| For filing an affidavit or other document, not being a document annexed to an affidavit ... ..                                                                                                                                                             | 0 1 0                          | 0 1 0                  |
| For every office copy of a document in the English language ... per folio                                                                                                                                                                                  | 0 0 4                          | 0 0 4                  |
| For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator. |                                |                        |
| On a receipt for money or for papers ( <i>only one fee to be taken, however many may be the papers delivered in at one time</i> ) ...                                                                                                                      | 0 1 0                          | 0 1 0                  |
| Poundage on moneys paid out of the office in any suit for every 50 <i>l</i> . or fraction thereof ... ..                                                                                                                                                   | 0 5 0                          | 0 5 0                  |
| From a person who is not a party in the suit, nor his solicitor, nor the clerk of the solicitor, on examining the court books in respect of any suit ... ..                                                                                                | 0 1 0                          | 0 1 0                  |
| For every summons of commitment ...                                                                                                                                                                                                                        | 0 3 0                          | 0 5 0                  |
| For every warrant against the body or goods or order of sale of vessel... ..                                                                                                                                                                               | 0 5 0                          | 0 7 6                  |
| On examining the documents in a suit in which no proceedings are pending, and which has been terminated within the last two years ... ..                                                                                                                   | 0 2 6                          | 0 2 6                  |
| Ditto, ditto, if beyond that period ...                                                                                                                                                                                                                    | 0 3 6                          | 0 3 6                  |
| For every sitting in which the registrar is employed as an examiner where the amount claimed exceeds 20 <i>l</i> . ... ..                                                                                                                                  | 0 7 0                          | 0 10 0                 |
| When the sitting is longer than one hour, then for every additional hour or part of an hour ... ..                                                                                                                                                         | 0 5 0                          | 0 7 0                  |
| Where the registrar shall be required to attend elsewhere than at the court or office, in addition to the above... ..                                                                                                                                      | 0 10 0                         | 1 0 0                  |

| Fees where the Court exercises jurisdiction under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869.                      | Where the amount claimed       |                        |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|------------------------|
|                                                                                                                                      | Does not exceed 100 <i>l</i> . | Exceeds 100 <i>l</i> . |
|                                                                                                                                      | £ s. d.                        | £ s. d.                |
| Mileage one way from the office to the place of examination, for each mile ... ..                                                    | 0 0 6                          | 0 0 6                  |
| For taxation of costs ... ..                                                                                                         | 0 5 0                          | 0 7 0                  |
| <i>High Bailiff's Fees.</i>                                                                                                          |                                |                        |
| For service of summons or subpcena, if served within three miles of registrar's office ... ..                                        | 0 5 0                          | 0 5 0                  |
| If served beyond three miles of registrar's office, reasonable expenses for travelling and maintenance.                              |                                |                        |
| Attendance at a special court if required by judge ... ..                                                                            | 0 7 6                          | 0 15 0                 |
| In execution of a warrant of arrest of a vessel or property ... ..                                                                   | 0 15 0                         | 1 0 0                  |
| In keeping possession of a vessel or property to include the cost of a vessel-keeper, if required ... per day                        | 0 5 0                          | 0 5 0                  |
| In execution had at a greater distance than three miles from registrar's office, reasonable expenses for travelling and maintenance. |                                |                        |
| In sale of vessel or property, including inventory for every 50 <i>l</i> . or fraction thereof ... ..                                | 0 10 0                         | 0 10 0                 |
| For service of summons of commitment ...                                                                                             | 0 4 0                          | 0 8 0                  |
| Execution of warrant against body or goods ... ..                                                                                    | 1 0 0                          | 1 10 0                 |
| Conveyance to gaol... .. per mile                                                                                                    | 0 1 0                          | 0 1 0                  |

N.B.—Where the amount or value of the subject-matter of the action or matter is not disclosed by the plaint or petition it shall be taken not to exceed 100*l*., and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l*., the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l*. may then be taken.

#### PART V.

##### *Registrar's Fees.*

Taxing every account under section 4 of the Parliamentary Elections (Returning Officers) Act, 1875:—

|                                                                                                                               | s. d. |
|-------------------------------------------------------------------------------------------------------------------------------|-------|
| Where the amount of the account to be taxed does not exceed 50 <i>l</i> . ... ..                                              | 10 0  |
| Where such amount exceeds 50 <i>l</i> ., for every 50 <i>l</i> . or fractional part of 50 <i>l</i> . an additional fee of ... | 10 0  |



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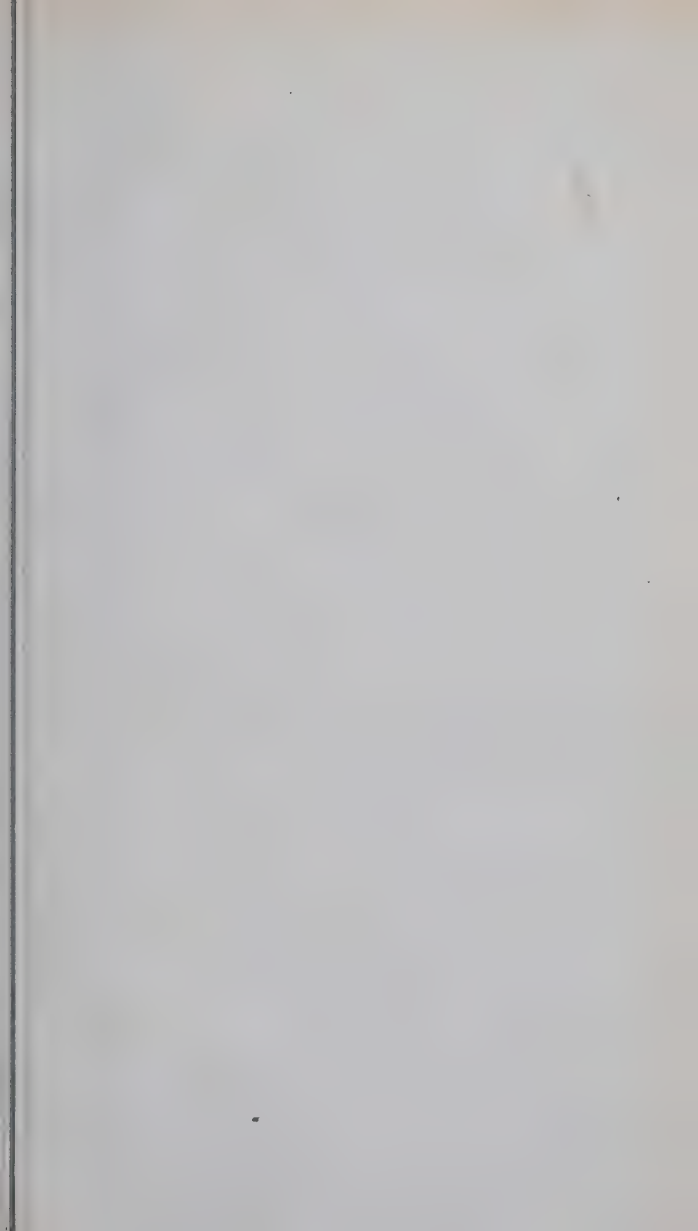
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